

# EXHIBIT B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MT. HAWLEY INSURANCE )  
COMPANY, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 1:22-cv-10354  
 )  
BEACH CRUISER, LLC )  
and FLYWAY )  
MANAGEMENT, LLC, )  
 )  
Defendants. )  
 )  
and )  
 )  
NATIONWIDE GENERAL )  
INSURANCE COMPANY, )  
 )  
Intervenor Defendant. )

The deposition via Zoom of  
MT. HAWLEY INSURANCE COMPANY called by  
the Defendant for examination, taken  
pursuant to notice and pursuant to the  
Federal Rules of Civil Procedure for the  
United States District Courts pertaining  
to the taking of depositions, taken  
before Alyssa N. Kuipers, Certified  
Shorthand Reporter, Registered  
Professional Reporter, commencing at  
10:09 a.m. on the 15th day of  
December, 2023.

2

1 APPEARANCES:  
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8 On behalf of the Plaintiff;

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15 On behalf of the Defendants  
16 Beach Cruiser, LLC and  
17 Flyway Management, LLC;

18 RIKER DANZIG, LLP  
19 MR. LUCAS D. KATZENMEIER  
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25 On behalf of the Intervenor  
Defendant Nationwide General  
Insurance Company.

\* \* \* \* \*

4

1 (Witness sworn.)

2 WHEREUPON:

3 MT. HAWLEY INSURANCE COMPANY,  
4 called as a witness herein, having been  
5 first duly sworn, was examined and  
6 testified as follows:

7 DIRECT EXAMINATION  
8 BY MR. KATZENMEIER:

9 Q. Well, good morning,  
10 Mr. Brownell. My name is Lucas  
11 Katzenmeier. I'm an attorney with Riker  
12 Danzig. We represent Nationwide General  
13 Insurance Company in this matter,  
14 intervener defendant.

15 Before we get started on the  
16 deposition proper, I'm going to give you  
17 some ground rules. First, you just took  
18 an oath. That means you're required to  
19 tell the truth in this deposition. Do  
20 you understand that?

21 A. Yes.

22 Q. Okay. And as you're aware,  
23 we have a court reporter with us, who is  
24 taking down everything we say, because of  
25 that and especially because this

3

# INDEX

1 WITNESS:	PAGE
2 MT. HAWLEY INSURANCE COMPANY	
3 Direct Examination by Mr. Katzenmeier.	4
4 Cross-Examination by Mr. Pierantoni...	75
5 Redirect Examination by	
6 Mr. Katzenmeier.....	133
7 Recross-Examination by Mr. Pierantoni.	139

# EXHIBITS

10 NATIONWIDE DEPOSITION EXHIBIT	PAGE
11 Exhibit A supplemental application	18
12 Exhibit B e-mail, 8/17/22	28
13 Exhibit C underwriting guidelines	33
14 Exhibit D November 14th letter	51
15 Exhibit E '21 to '22 policy	58
16 Exhibit F claim notes	67
17 Exhibit G letter to David Hoffman	70
18 Exhibit H Delahunt Law letter	75
19 Exhibit I e-mail, MH1305	110
20 Exhibit J invoice	128

21 (Exhibits I and J retained by  
22 Mr. Pierantoni.)  
23  
24  
25

5

1 deposition is virtual, your responses  
2 need to be verbal. You have to say yes,  
3 no, or otherwise verbalize your response  
4 to a question. That means you can't just  
5 shake your head no. Do you understand  
6 that?

7 A. Yes, I do.

8 Q. Okay. Second, because we  
9 need a clean transcript, we have to avoid  
10 talking over each other, so when I ask a  
11 question, please let me finish my  
12 question before you start answering. And  
13 when you answer, I will try to let you  
14 finish your answer before I ask another  
15 question. Is that okay?

16 A. Yes.

17 Q. Okay. When we're going  
18 through these and you're responding to my  
19 questions, I don't want you to guess in  
20 your answers. If you don't know the  
21 answer to the question, you can say that.  
22 If you can give me an approximation of  
23 something, that's okay. Just tell me  
24 you're approximating, but don't guess.  
25 Do you understand that?

6

1 A. Yes.

2 Q. Okay. Perfect. I'm not  
3 here to trick you when we're doing this.  
4 If you don't understand a question I'm  
5 asking, please ask for clarification. If  
6 you answer my question without asking for  
7 clarification, I'll assume you heard my  
8 question and you understood it.

9 With that said, during the  
10 course of this deposition, your attorney,  
11 Mr. Delahunt, may object to a question.  
12 After your attorney has voiced his  
13 objection, pause. You can answer the  
14 question unless your attorney instructs  
15 you not to, though.

16 If you need a break for any  
17 reason, just please let me know. I'm  
18 amenable to that. All I ask is, if  
19 there's a question pending at the time  
20 you request to take a break, the question  
21 is answered before we leave. Is that  
22 okay for you?

23 A. Yes.

24 Q. Okay. And, lastly, you  
25 shouldn't be communicating with anyone

7

1 else during the course of the deposition.  
2 I mean like taking phone calls, texting,  
3 anything like that, e-mails. Do you have  
4 a phone on you right now?

5 A. I have a personal cell phone  
6 that's on the table in the sleep mode  
7 just for family emergency purposes.

8 Q. Okay. Perfect. So, yeah.  
9 As long as you understand that, we should  
10 be fine. Okay.

11 MR. DELAHUNT: I'm sorry. I  
12 just want to test if you can hear  
13 me on Kevin's microphone.

14 MR. KATZENMEIER: It's a  
15 little faint, but yes.

16 MR. DELAHUNT: Okay. All  
17 right. If I need to talk, I will  
18 speak up. Alyssa, can you hear me  
19 sufficiently?

20 THE COURT REPORTER: Yes, I  
21 can hear you.

22 BY MR. KATZENMEIER:

23 Q. Okay. So, Mr. Brownell,  
24 have you taken any medications today that  
25 could affect your ability to provide

8

1 truthful testimony?

2 A. No.

3 Q. Do you have any health  
4 problems that could affect your ability  
5 to provide truthful testimony?

6 A. No.

7 Q. Okay. Have you ever had a  
8 deposition taken before?

9 A. Yes.

10 Q. Okay. How many times, would  
11 you say?

12 A. Roughly a half dozen.

13 Q. A half dozen. Okay. And  
14 have those all been within the past  
15 couple years, within the past year?

16 A. Within the past 10 to  
17 15 years total.

18 Q. 10 to 15 years. Okay. And  
19 for what reason was your deposition taken  
20 previously?

21 A. With respect to my current  
22 or former jobs.

23 Q. Okay. So we will -- we'll  
24 get into that in a second.

25 Have you ever provided

9

1 testimony at a trial before?

2 A. No.

3 Q. Okay. Did you review any  
4 documents to refresh your recollection  
5 prior to this deposition?

6 A. I did review documents, but  
7 not for that purpose.

8 Q. Okay. For what purpose did  
9 you review documents prior to this  
10 deposition?

11 A. To prepare for this  
12 deposition.

13 Q. To prepare for this  
14 deposition. Okay. What documents were  
15 those?

16 A. All of them were documents  
17 that had been produced as part of  
18 Mt. Hawley's document production in this  
19 lawsuit.

20 Q. Okay. Did you review any  
21 pleadings prior to this deposition?

22 A. Not specifically.

23 Q. Okay. By which I mean, for  
24 example, Mt. Hawley's declaratory  
25 judgment complaint in this action.

<p style="text-align: right;">10</p> <p>1 A. I may have seen that at some</p> <p>2 point, but I don't have a specific</p> <p>3 recollection of doing so. I did not</p> <p>4 review the complaint in preparation for</p> <p>5 this deposition.</p> <p>6 <b>Q. Okay. Thank you very much.</b></p> <p>7 <b>Just so we have it going back, can you</b></p> <p>8 <b>please state your full name.</b></p> <p>9 A. Kevin Brownell, B R O W N E</p> <p>10 L L.</p> <p>11 <b>Q. Okay. And your age for me,</b></p> <p>12 <b>please?</b></p> <p>13 A. 49.</p> <p>14 <b>Q. Thank you, sir. So you</b></p> <p>15 <b>mentioned you have been deposed in</b></p> <p>16 <b>connection with your current position and</b></p> <p>17 <b>prior positions. What is your current --</b></p> <p>18 <b>who is your current employer?</b></p> <p>19 A. RLI.</p> <p>20 <b>Q. RLI. And is that -- that's</b></p> <p>21 <b>an insurance company?</b></p> <p>22 A. Yes.</p> <p>23 <b>Q. Or is that a holding</b></p> <p>24 <b>company?</b></p> <p>25 A. It is both an insurer</p>	<p style="text-align: right;">11</p> <p>1 itself, and also it is the parent company</p> <p>2 of Mt. Hawley Insurance Company.</p> <p>3 <b>Q. Okay. So is Mt. Hawley a</b></p> <p>4 <b>wholly-owned subsidiary of RLI?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. How long have you been at</b></p> <p>7 <b>RLI?</b></p> <p>8 A. Since August of 2018.</p> <p>9 <b>Q. August 2018. Okay. And</b></p> <p>10 <b>what is your current position at RLI?</b></p> <p>11 A. Assistant Vice-President,</p> <p>12 Claims.</p> <p>13 <b>Q. Okay. How long have you</b></p> <p>14 <b>been in that position?</b></p> <p>15 A. Since March 2023.</p> <p>16 <b>Q. March 2023. And what do you</b></p> <p>17 <b>do as Assistant Vice-President of Claims?</b></p> <p>18 A. I manage and run the</p> <p>19 casualty, general liability claims team</p> <p>20 for the Central and South regions.</p> <p>21 <b>Q. Okay. And let's dig into</b></p> <p>22 <b>that a little bit.</b></p> <p>23 <b>As far as managing and</b></p> <p>24 <b>running claims, what does that entail?</b></p> <p>25 A. I oversee the claims</p>
<p style="text-align: right;">12</p> <p>1 examiners that handle commercial general</p> <p>2 liability claims, casualty claims in the</p> <p>3 Central and South regions of the United</p> <p>4 States.</p> <p>5 <b>Q. Okay. And when you say</b></p> <p>6 <b>"Central and South regions of the United</b></p> <p>7 <b>States," would that include areas like</b></p> <p>8 <b>South Carolina?</b></p> <p>9 A. South Carolina is part of my</p> <p>10 territory, yes.</p> <p>11 <b>Q. Okay. Sounds good.</b></p> <p>12 <b>Prior to this position, what</b></p> <p>13 <b>position did you hold in RLI or</b></p> <p>14 <b>elsewhere?</b></p> <p>15 A. Claims Director.</p> <p>16 <b>Q. Claims Director. Was that</b></p> <p>17 <b>at RLI?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. Okay. And when were you the</b></p> <p>20 <b>Claims Director at RLI?</b></p> <p>21 A. I had that title from the</p> <p>22 beginning of my employment at RLI through</p> <p>23 March of 2023.</p> <p>24 <b>Q. Okay. And when did you</b></p> <p>25 <b>begin your employment at RLI?</b></p>	<p style="text-align: right;">13</p> <p>1 A. August of 2018.</p> <p>2 <b>Q. August 2018. Okay. What</b></p> <p>3 <b>was your position before taking the</b></p> <p>4 <b>position at RLI?</b></p> <p>5 A. I had a claim examiner</p> <p>6 position at a company called Starr</p> <p>7 Indemnity.</p> <p>8 <b>Q. And when did you leave that</b></p> <p>9 <b>position?</b></p> <p>10 A. When I came to RLI.</p> <p>11 <b>Q. Okay. And when did you</b></p> <p>12 <b>start that position?</b></p> <p>13 A. I don't remember the exact</p> <p>14 date, but it was in 2014.</p> <p>15 <b>Q. 2014. Okay. And what were</b></p> <p>16 <b>your job responsibilities at Starr?</b></p> <p>17 A. I was a claims examiner.</p> <p>18 <b>Q. Claims examiner. Okay.</b></p> <p>19 <b>Mr. Brownell, could you tell me the</b></p> <p>20 <b>highest level of education you have?</b></p> <p>21 A. I have a law degree.</p> <p>22 <b>Q. A law degree. Okay. And</b></p> <p>23 <b>where did you obtain the law degree?</b></p> <p>24 A. University of Illinois at</p> <p>25 Urbana-Champaign.</p>

14

1 **Q. Okay. And what year was**  
2 **that?**

3 A. 2000.

4 **Q. 2000. Okay. And did you**  
5 **have an undergrad somewhere else or ...**

6 A. I have an undergraduate  
7 degree in media studies from the same  
8 institution.

9 **Q. Okay. And when did you**  
10 **obtain that degree?**

11 A. 1997.

12 **Q. '97. Okay. All right. So**  
13 **are you familiar with the declaratory**  
14 **judgment action filed by**  
15 **Mt. Hawley?**

16 A. Yes.

17 **Q. Okay. Are you familiar with**  
18 **the claims that are asserted in that**  
19 **declaratory judgment action?**

20 A. Yes.

21 **Q. So if you could, in your**  
22 **words, just what is your understanding of**  
23 **the claims asserted by Mt. Hawley in that**  
24 **complaint?**

25 A. I would say, generally, the

16

1 A. It would have been our Claim  
2 Counsel Unit.

3 **Q. Claim Counsel Unit. Okay.**  
4 **And do you have any idea -- or do you**  
5 **know who it would have been with respect**  
6 **to this declaratory judgment action in**  
7 **particular?**

8 A. The claim counsel attorney  
9 that works with my unit, her name is Dana  
10 Kanellakes.

11 **Q. When was the decision made**  
12 **to file the declaratory judgement action?**

13 MR. PIERANTONI: Can you  
14 spell that last name for me? I'm  
15 sorry.

16 THE WITNESS:

17 K A N E L L A K E S.

18 BY MR. KATZENMEIER:

19 **Q. Okay. I'm sorry,**  
20 **Mr. Brownell. I don't know if you got my**  
21 **last question. I can ask it again, if**  
22 **not.**

23 A. Please ask it again.

24 **Q. Do you know when the**  
25 **decision was made to file a declaratory**

15

1 complaint speaks for itself, but my  
2 understanding of the complaint is that we  
3 are seeking a declaration that there's no  
4 coverage under the Mt. Hawley policy at  
5 issue for the claims asserted against the  
6 defendants in the underlying lawsuit.

7 **Q. Okay. So whose decision was**  
8 **it to file a declaratory judgment action**  
9 **within Mt. Hawley?**

10 A. That would have been made by  
11 claim counsel.

12 **Q. Claim counsel. Okay. But**  
13 **if there was -- So was there anyone in**  
14 **Mt. Hawley who, administratively, it was**  
15 **their decision?**

16 A. I'm not sure what you mean  
17 by "administratively."

18 **Q. So, for example -- to be**  
19 **clear, I'm not asking anything your**  
20 **counsel told you or any recommendation**  
21 **made to you. I'm purely asking about**  
22 **procedure here.**

23 **So if a recommendation was**  
24 **made for litigation, who would have been**  
25 **the one saying yes or no?**

17

1 **judgment action in this case?**

2 A. I don't know the exact date,  
3 but it would have been shortly before the  
4 complaint was filed.

5 **Q. Okay. Thank you. So would**  
6 **it be fair to say that the complaint in**  
7 **this case touches on an application for**  
8 **insurance submitted by Beach Cruiser?**

9 A. Yes.

10 **Q. Okay. Are you familiar with**  
11 **that application?**

12 A. Yes.

13 **Q. Okay. Have you reviewed**  
14 **that application for insurance?**

15 A. Yes.

16 **Q. Okay. I am going to go**  
17 **ahead and pull that application up on my**  
18 **screen, just so we have a point of**  
19 **reference while we're talking about it.**

20 **Okay. Mr. Brownell, can you**  
21 **see my screen?**

22 A. Yes.

23 MR. KATZENMEIER: Can  
24 everybody else see my screen?

25 Okay. Let's go ahead and mark

<p style="text-align: right;">18</p> <p>1 this as Nationwide Exhibit A. And</p> <p>2 just so everyone's aware, this is</p> <p>3 the entire conversation thread.</p> <p>4 The application is an attachment</p> <p>5 to this e-mail.</p> <p>6 (Nationwide Deposition Exhibit A</p> <p>7 marked for identification.)</p> <p>8 BY MR. KATZENMEIER:</p> <p>9 <b>Q. Okay. Mr. Brownell, do you</b></p> <p>10 <b>recognize this document?</b></p> <p>11 A. Yes.</p> <p>12 <b>Q. Okay. Can you tell me what</b></p> <p>13 <b>this document is?</b></p> <p>14 A. This is the supplemental</p> <p>15 application submitted by Beach Cruiser</p> <p>16 for coverage with Mt. Hawley.</p> <p>17 <b>Q. And is this the document you</b></p> <p>18 <b>mentioned reviewing prior to this</b></p> <p>19 <b>deposition?</b></p> <p>20 A. It's one of them.</p> <p>21 <b>Q. I will -- so this is -- This</b></p> <p>22 <b>would be part of the application</b></p> <p>23 <b>submitted by Beach Cruiser; is that fair</b></p> <p>24 <b>to say?</b></p> <p>25 A. This is the supplemental</p>	<p style="text-align: right;">19</p> <p>1 application, and there's also a basic</p> <p>2 application.</p> <p>3 <b>Q. Right. Okay. So let me</b></p> <p>4 <b>scroll down a bit.</b></p> <p>5 <b>Is this the other part of</b></p> <p>6 <b>the application?</b></p> <p>7 A. It looks like it, yes.</p> <p>8 <b>Q. The basic application.</b></p> <p>9 <b>Okay. So I will scroll back up here for</b></p> <p>10 <b>you.</b></p> <p>11 <b>You mentioned that</b></p> <p>12 <b>Mt. Hawley's claims in this action</b></p> <p>13 <b>involve some alleged misrepresentations</b></p> <p>14 <b>in Beach Cruiser's application for</b></p> <p>15 <b>insurance. Can you tell me specifically</b></p> <p>16 <b>what misrepresentation or alleged</b></p> <p>17 <b>misrepresentation you may be referring</b></p> <p>18 <b>to?</b></p> <p>19 A. Yes. It's the second</p> <p>20 question listed under No. 3: Are any</p> <p>21 properties rented by the day or by the</p> <p>22 week?</p> <p>23 <b>Q. Okay. And is it correct</b></p> <p>24 <b>that this -- that checkmark next to that</b></p> <p>25 <b>question is marked no, correct?</b></p>
<p style="text-align: right;">20</p> <p>1 A. That's correct.</p> <p>2 <b>Q. Is that what you're alleging</b></p> <p>3 <b>is a misrepresentation in this case?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. Are there any other</b></p> <p>6 <b>aspects of this supplemental application</b></p> <p>7 <b>that you consider to be a</b></p> <p>8 <b>misrepresentation?</b></p> <p>9 A. No.</p> <p>10 <b>Q. Okay. Let's scroll back</b></p> <p>11 <b>down to the -- This is the second page.</b></p> <p>12 <b>Is there any aspect on the second page of</b></p> <p>13 <b>this supplemental dwelling application</b></p> <p>14 <b>that you would consider to be a</b></p> <p>15 <b>misrepresentation?</b></p> <p>16 A. Not to my knowledge, no.</p> <p>17 <b>Q. Okay. And we're going to go</b></p> <p>18 <b>through the same question with the basic</b></p> <p>19 <b>application, as you termed it. Is there</b></p> <p>20 <b>any information on this page of the basic</b></p> <p>21 <b>application that you would consider to be</b></p> <p>22 <b>a misrepresentation?</b></p> <p>23 A. Not to my knowledge, no.</p> <p>24 <b>Q. Okay. And it looks like</b></p> <p>25 <b>everything is blank on the rest of this</b></p>	<p style="text-align: right;">21</p> <p>1 <b>except for the address list. Do you see</b></p> <p>2 <b>-- Are you familiar with the allegations</b></p> <p>3 <b>asserted in the underlying action?</b></p> <p>4 A. Yes.</p> <p>5 <b>Q. Okay. Are you familiar with</b></p> <p>6 <b>the address to the property in question</b></p> <p>7 <b>involved in the underlying action?</b></p> <p>8 A. I reviewed it in preparation</p> <p>9 for this deposition, but I don't remember</p> <p>10 which one of them, as I sit here right</p> <p>11 now, is the one we're talking about.</p> <p>12 <b>Q. Okay. That sounds good to</b></p> <p>13 <b>me.</b></p> <p>14 MR. DELAHUNT: Luke, if you</p> <p>15 want to represent which property</p> <p>16 is at issue, so we can -- you</p> <p>17 know, I don't have any problem</p> <p>18 with that.</p> <p>19 MR. KATZENMEIER: I mean,</p> <p>20 yeah. I'm fine with that. I just</p> <p>21 didn't want to put words in his</p> <p>22 mouth.</p> <p>23 MR. DELAHUNT: I understand.</p> <p>24 BY MR. KATZENMEIER:</p> <p>25 <b>Q. So, I mean, I guess, along</b></p>



22

1 **those lines, Mr. Brownell -- your names**  
 2 **being switched is getting to me.**

3 **Mr. Brownell, would it be --**  
 4 **would it sound correct that 146 President**  
 5 **Street is the property in question in**  
 6 **this case?**

7 A. I have no reason to dispute  
 8 that.

9 **Q. Okay. Thank you. So**  
 10 **scrolling back up a little bit, we've --**  
 11 **you've singled out the "are properties**  
 12 **rented by the day or by the week" as the**  
 13 **point of the alleged misrepresentation.**  
 14 **What is your basis for asserting that**  
 15 **that was incorrect?**

16 A. Well, the property that is  
 17 the subject of the underlying lawsuit was  
 18 -- prior to this policy and at the time  
 19 of the alleged loss, was being used as an  
 20 Airbnb or Vrbo property.

21 **Q. Okay. And when did**  
 22 **Mt. Hawley become aware of this?**

23 A. David Hoffman, who was the  
 24 claims examiner assigned to this, learned  
 25 that information during his investigation

24

1 **did Mr. Hoffman first become aware prior**  
 2 **to the final confirmation as you said? I**  
 3 **guess, what was the first point that**  
 4 **raised the suspicion?**

5 A. The answer to that question  
 6 will be found in the claim file notes  
 7 that were produced in litigation, but  
 8 it's my understanding, from those claim  
 9 notes, that Mr. Hoffman most likely  
 10 gleaned that information during a phone  
 11 call with the insured.

12 **Q. Okay. And when you say**  
 13 **final confirmation was reached in**  
 14 **September 2022, I believe you mentioned,**  
 15 **what form did this final confirmation**  
 16 **take?**

17 A. The last piece of  
 18 information to make that determination  
 19 was information from the insured stating  
 20 that the property had been an Airbnb and  
 21 Vrbo property for several years prior to  
 22 Mt. Hawley's coverage. The claim file  
 23 notes will reflect in what form that  
 24 information came in. Whether it was a  
 25 phone call or e-mail, I don't recall, but

23

1 of the claim. And I believe that the  
 2 final confirmation that this property was  
 3 an Airbnb and Vrbo property and had been  
 4 prior to any coverage with Mt. Hawley,  
 5 that final determination was -- the final  
 6 conclusion was come to in, I want to say,  
 7 September 2nd of 2022, I believe is the  
 8 date.

9 **Q. You say the "final**  
 10 **confirmation." Was there an initial**  
 11 **conclusion or suspicion?**

12 A. He learned earlier during  
 13 his investigation process that, at time  
 14 of this loss, the property was rented  
 15 through Airbnb and Vrbo. When I say  
 16 "final," I'm referring to the fact that  
 17 he then confirmed it had been rented out  
 18 through Airbnb and Vrbo for several years  
 19 prior to Mt. Hawley's coverage.

20 **Q. Okay. And we'll dig into**  
 21 **that a little bit, but have you discussed**  
 22 **this matter with Mr. Hoffman, I think you**  
 23 **said?**

24 A. I have not.

25 **Q. You have not. Okay. How**

25

1 that's in the claim file notes.

2 **Q. Okay. When did Mt. Hawley**  
 3 **receive the claim from Beach Cruiser in**  
 4 **this case?**

5 A. Well, the claim didn't come  
 6 in from Beach Cruiser. The claim was  
 7 submitted by Beach Cruiser's retail  
 8 agent.

9 **Q. And who is that?**

10 A. I don't recall the name of  
 11 their retail agent.

12 **Q. Okay. Does the name USI**  
 13 **sound correct?**

14 A. Yes. That refreshes my  
 15 recollection. I believe it's USI.

16 **Q. Okay. Thank you,**  
 17 **Mr. Brownell.**

18 **So having reached that**  
 19 **recollection, do you recall when**  
 20 **Mt. Hawley would have received notice of**  
 21 **the claim from USI?**

22 A. No, but the claim file would  
 23 document that.

24 **Q. Okay. Let me pull up some**  
 25 **other documents just to see if this**



26

1 refreshes our memory.

2 Okay. Mr. Brownell, can you  
3 see my screen?

4 A. Yes.

5 Q. Okay. So what I have up for  
6 you is an e-mail right now. It appears  
7 to be from David Hoffman. Does that look  
8 correct?

9 A. Yes.

10 Q. Okay. And it appears to be  
11 sent to Drew Augustine. Do you know who  
12 Drew Augustine is?

13 A. It's my understanding he's  
14 the property manager for this property  
15 with Beach Cruiser.

16 Q. And it looks like it also  
17 went to someone at Flyway; is that  
18 correct?

19 A. Yes.

20 Q. Okay. So I guess, just  
21 reading the first paragraph, the first  
22 sentence -- you can either read it  
23 yourself or I can read it out loud into  
24 the record.

25 A. I can read it myself.

28

1 Mr. Brownell, can you see my screen?  
2 (Nationwide Deposition Exhibit B  
3 marked for identification.)

4 BY THE WITNESS:

5 A. Yes.

6 Q. Thank you. We're back on  
7 the supplemental dwelling application,  
8 correct?

9 A. Yes.

10 Q. Okay. So I just want you to  
11 take me through the process of this  
12 supplemental dwelling application and  
13 also the basic application. So once --  
14 Putting aside the -- whether there was a  
15 misrepresentation or not, in the normal  
16 course of events, the insured fills this  
17 out. Who does it go to?

18 MR. DELAHUNT: I'm going to  
19 object to the extent that that  
20 assumes the insured fills out the  
21 application. That hasn't been put  
22 into evidence yet.

23 BY THE WITNESS:

24 A. It depends on which product  
25 we're talking about. The product at

27

1 Q. Okay. Would it be correct  
2 to say that that first sentence confirms  
3 the rental units at 146 President Street  
4 were rented out both in Airbnb and Vrbo?

5 A. Yes. This appears to be  
6 Mr. Hoffman's e-mail summary of portions  
7 of the phone call he had earlier that  
8 day.

9 Q. Okay. And the date of this  
10 e-mail is August 17th, 2022, correct?

11 A. Yes.

12 Q. Would this be the final  
13 confirmation that you referred to  
14 earlier?

15 A. No.

16 Q. No? Would the final  
17 confirmation have taken the form of an  
18 e-mail to Beach Cruiser or Flyway?

19 A. I would have to refer to the  
20 claim notes to answer that question.

21 Q. Okay. I'll stop sharing.  
22 And before we get too far away from that,  
23 let's mark that as Nationwide Exhibit B.  
24 Okay. So I'm going to -- I think I can  
25 share my screen here again. All right.

29

1 issue here is what we call general  
2 binding authority, or GBA for short.  
3 Within GBA, the process is that the  
4 managing general agent, which in this  
5 case is Bass, would obtain a completed  
6 application and supplemental application  
7 from the retail agent.

8 Q. Okay. And who drafted the  
9 dwelling supplemental application?

10 A. This particular supplemental  
11 application was actually prepared by a  
12 different insurance company, RSUI.

13 Q. Okay. Is this dwelling  
14 application drafted by RSUI used by  
15 Mt. Hawley?

16 A. Not specifically. However,  
17 it's not uncommon for Mt. Hawley to  
18 accept supplemental applications on  
19 another insurance company's form provided  
20 that it asks the same information or  
21 similar information that we would ask.

22 Q. Okay. So, I guess, put  
23 another way: This isn't the standard  
24 dwelling application used by  
25 Mt. Hawley; would that be fair?

30

1 A. That's fair.

2 **Q. Okay. So assuming -- once**  
 3 **this -- assuming it's been filled out by**  
 4 **the insured, once a supplemental dwelling**  
 5 **application is submitted by an insurance**  
 6 **retail agent, who does it go to?**

7 A. For this product, it goes to  
 8 the MGA, which is Bass.

9 **Q. And you said the MGA. Can**  
 10 **you tell me what that means?**

11 A. Managing general agent.

12 **Q. Okay. And you said that was**  
 13 **Bass?**

14 A. Bass Underwriters, yes.

15 **Q. Bass Underwriters. Okay.**  
 16 **And is Bass Underwriters the MGA for**  
 17 **Mt. Hawley?**

18 A. It's one of several.

19 **Q. It's one of several. Is**  
 20 **Bass Underwriters owned by Mt. Hawley?**

21 A. No.

22 **Q. Okay. As far as you know,**  
 23 **does Bass Underwriters underwrite for**  
 24 **companies other than Mt. Hawley?**

25 A. I believe that they do.

32

1 **Q. Of course.**

2 A. If the application --  
 3 information submitted with the  
 4 application falls within the guidelines,  
 5 Bass is authorized to issue a policy.  
 6 There are certain times where the  
 7 guidelines require that, depending on the  
 8 answers to certain questions in the  
 9 applications, Bass has to refer or submit  
 10 the application into a Mt. Hawley  
 11 underwriter for review before they can --  
 12 before a policy can be issued.

13 **Q. Okay. And you mentioned the**  
 14 **underwriting guidelines. We'll dig into**  
 15 **that, but I'm going to pull them up, just**  
 16 **so we have them for reference while we're**  
 17 **discussing it.**

18 **Okay. Mr. Brownell, can you**  
 19 **see my screen?**

20 A. Yes.

21 **Q. Okay. Can we mark this as**  
 22 **Nationwide Exhibit C.**

23 **Mr. Brownell, does this look**  
 24 **like the underwriting guidelines you were**  
 25 **just referring to?**

31

1 **Q. Okay. And for this type of**  
 2 **product insurance -- or for this type of**  
 3 **insurance product, does Mt. Hawley use**  
 4 **other underwriting companies aside from**  
 5 **Bass Underwriters?**

6 A. Yes. At present, the GBA  
 7 product, I believe, has nine different  
 8 MGAs that they work with.

9 **Q. How about at the time this**  
 10 **Mt. Hawley policy was issued? Do you**  
 11 **know?**

12 A. I don't know for sure. At  
 13 the time this product began, there were  
 14 about four to five MGAs that they used  
 15 and there are nine now, so it would be  
 16 somewhere in between there.

17 **Q. So building on that, once**  
 18 **this application has reached Bass, what**  
 19 **would Bass do with the application?**

20 A. Bass has a set of  
 21 underwriting guidelines that they have to  
 22 follow when they are reviewing an  
 23 application to determine whether a policy  
 24 can be issued. And I'm speaking  
 25 generally right now.

33

1 **(Nationwide Deposition Exhibit C**  
 2 **marked for identification.)**

3 BY THE WITNESS:

4 A. For rental dwellings, yes.

5 **Q. Okay. So are there other**  
 6 **underwriting guidelines that are provided**  
 7 **by Mt. Hawley to Bass?**

8 A. For different classes of  
 9 insureds, yes.

10 **Q. Would this have been the**  
 11 **underwriting guidelines provided to Bass**  
 12 **for the Mt. Hawley policy for the --**  
 13 **Sorry. Let me strike that and clarify**  
 14 **because I can see how that was a little**  
 15 **confusing.**

16 **Would this have been the**  
 17 **underwriting guidelines to be used in**  
 18 **connection with the Mt. Hawley policy**  
 19 **issued to Beach Cruiser in this case?**

20 A. Yes.

21 **Q. So you mentioned referrals a**  
 22 **short while ago. I'm reading this**  
 23 **sentence here. I don't know if you can**  
 24 **see my cursor.**

25 A. Yes, I can.

34

1 **Q. It says short-term rentals**  
 2 **less than 12 months and vacation rentals**  
 3 **should be referred. Can you tell me what**  
 4 **"referred" means in this sentence?**

5 A. That's what I indicated  
 6 earlier, that if the application  
 7 indicated that there was a short-term  
 8 rental or a vacation rental for the  
 9 property for which coverage was being  
 10 sought, Bass would have to refer that  
 11 application into a Mt. Hawley underwriter  
 12 for review.

13 **Q. Okay. So assuming --**  
 14 **hypothetically, if there were no issues**  
 15 **or incorrect information relayed in an**  
 16 **application, you mentioned Bass has the**  
 17 **authority to issue a policy on behalf of**  
 18 **Mt. Hawley; is that correct?**

19 A. As long as the risk falls  
 20 within the underwriting guidelines and  
 21 there are no facts which require a  
 22 referral per those guidelines, yes.

23 **Q. So is Bass the entity that**  
 24 **would be responsible for comparing the**  
 25 **application to the underwriting**

36

1 **have been referred to Mt. Hawley?**

2 A. Yes.

3 **Q. Okay. How often does**  
 4 **Mt. Hawley deal with Bass or communicate**  
 5 **with Bass during the underwriting**  
 6 **process?**

7 A. It depends on whether the  
 8 application is referred or not.

9 **Q. Okay. Does Bass communicate**  
 10 **with Mt. Hawley in the process of**  
 11 **renewing a policy?**

12 A. I think the answer remains  
 13 the same. It depends on if there's a  
 14 reason for referral.

15 **Q. Okay. So in the event that**  
 16 **Bass determines that no referral is**  
 17 **necessary, what is the process for**  
 18 **issuing a policy on behalf of Mt. Hawley**  
 19 **in that event?**

20 A. I'm not sure what you mean  
 21 by process of issuing a policy. If Bass  
 22 concludes that there is no reason for  
 23 referral and the risk otherwise falls  
 24 within the underwriting guidelines, they  
 25 may issue a policy to that insured.

35

1 **guidelines?**

2 A. Initially, yes.

3 **Q. Okay. So you say**  
 4 **"initially, yes." After Bass, who would**  
 5 **it be?**

6 A. It would be Mt. Hawley if it  
 7 was a matter that had been referred.

8 **Q. Okay. But only if it had**  
 9 **been referred?**

10 A. Correct.

11 **Q. So if Bass determined that**  
 12 **the application fell within the**  
 13 **underwriting guidelines without need for**  
 14 **referral, Bass would have the authority**  
 15 **to issue a policy on behalf of**  
 16 **Mt. Hawley; is that correct?**

17 A. Yes.

18 **Q. Okay. So, for example, in**  
 19 **the Mt. Hawley -- Sorry. Strike that.**

20 **In the application that was**  
 21 **attached to Mt. Hawley's DJ complaint in**  
 22 **this case, which I showed you earlier, if**  
 23 **the application had marked yes instead**  
 24 **under short-term rentals, is that a**  
 25 **situation in which the application should**

37

1 **Q. Okay. And is there any sort**  
 2 **of communication sent by Bass to**  
 3 **Mt. Hawley when such a policy had been**  
 4 **issued?**

5 A. I know that the policy is  
 6 communicated back to Mt. Hawley, but I'm  
 7 not exactly sure the form that that  
 8 takes.

9 **Q. Okay. I mean, so is there**  
 10 **any form of, I guess, confirmation sent**  
 11 **from Bass to Mt. Hawley that a policy has**  
 12 **been issued on Mt. Hawley's behalf?**

13 A. Bass provides a copy of the  
 14 issued policy to Mt. Hawley.

15 **Q. Okay. And what does**  
 16 **Mt. Hawley do with those policies, if**  
 17 **anything?**

18 A. Nothing. They're stored  
 19 electronically.

20 **Q. Okay. As far as you are**  
 21 **aware, is there any sort of review**  
 22 **process Bass undergoes with respect to**  
 23 **the information contained on an**  
 24 **application for insurance?**

25 A. I'm not sure I understand

38

1 that question.

2 **Q. Put another way: If Bass**  
3 **receives an application for insurance, is**  
4 **there any steps taken to verify the**  
5 **information in an application?**

6 A. I would say not typically.  
7 Bass relies on the representations that  
8 are made by the applicants who are  
9 filling out the application forms.

10 **Q. Okay. Does Mt. Hawley**  
11 **impose any requirements on Bass to verify**  
12 **the information in insurance**  
13 **applications?**

14 A. Not to my knowledge.

15 **Q. Okay. Would there have been**  
16 **any steps taken to verify any of the**  
17 **information contained in any application**  
18 **for insurance submitted by Beach Cruiser**  
19 **in this case?**

20 A. If you mean did Bass  
21 undertake any efforts to confirm the  
22 accuracy of the application responses,  
23 I'm not aware of any.

24 **Q. Okay. So in the event that**  
25 **a referral is necessary to Mt. Hawley,**

40

1 **regarding Airbnb, Vrbo, is that on**  
2 **Mt. Hawley's own supplemental**  
3 **application?**

4 A. I haven't reviewed that  
5 application, but it is my understanding  
6 that there is a question or questions on  
7 it that would be substantially similar to  
8 the one on the RSUI supplemental  
9 application.

10 **Q. Okay. And when you say**  
11 **"substantially similar to the one on the**  
12 **RSUI," do you -- are you saying it would**  
13 **say short-term rentals or it would**  
14 **specifically mention Airbnb, Vrbo, and**  
15 **other service?**

16 A. Not having reviewed the  
17 Mt. Hawley version of the supplemental  
18 application for rental dwellings, I can't  
19 answer that question as I sit here, but  
20 it is my understanding that it has a  
21 question designed to elicit the type of  
22 information we've been talking about with  
23 respect to short-term rentals.

24 **Q. Okay. Let me return to the**  
25 **underwriting guidelines we have here.**

39

1 **what is the process for reviewing the**  
2 **application that Mt. Hawley -- that has**  
3 **been referred to Mt. Hawley?**

4 A. Mt. Hawley will receive the  
5 application documents from Bass, and then  
6 Mt. Hawley will direct Bass to ask  
7 further questions pertaining to the  
8 issues that led to the referral.

9 **Q. Okay. So in this case,**  
10 **let's assume that the short-term rental**  
11 **question on the application had been**  
12 **marked yes. What follow-up questions, if**  
13 **any, would Mt. Hawley have had?**

14 A. There may have been several  
15 follow-up questions, but among them would  
16 definitely have been a question about  
17 whether the property was rented through  
18 Airbnb, Vrbo, or a similar service.

19 **Q. And I pointed to the**  
20 **supplemental dwelling application**  
21 **earlier. Does Mt. Hawley have its own**  
22 **standard form dwelling application?**

23 A. Supplemental application,  
24 yes.

25 **Q. And is that information**

41

1 **You can still see these on my screen,**  
2 **correct?**

3 A. Yes.

4 **Q. Okay. Thank you. Do you**  
5 **know when these underwriting guidelines**  
6 **were first promulgated by Mt. Hawley?**

7 A. I believe in 2016.

8 **Q. 2016. And how often, if**  
9 **regularly, are they updated?**

10 A. I don't know how often or  
11 regularly or if they are updated  
12 regularly. I know, over time, changes  
13 have been made to these guidelines  
14 generally, but it's my understanding that  
15 the guidelines pertaining to short-term  
16 rentals, Airbnb, Vrbo, have remained  
17 unchanged since 2016.

18 **Q. Okay. And who is it or what**  
19 **department is it within Mt. Hawley that**  
20 **updates these underwriting guidelines?**

21 A. The GBA underwriters.

22 **Q. Can you explain for me what**  
23 **the GBA underwriters are?**

24 A. They are underwriters who  
25 work for the GBA product.

42

1 **Q. Okay. And I'm scrolling**  
 2 **down -- It looks like, at the bottom of**  
 3 **this, this says version or V11/01/2020.**  
 4 **Would that be the date that this**  
 5 **particular iteration of the underwriting**  
 6 **guidelines was promulgated?**

7 A. It appears so, but I'm not  
 8 -- I don't know, but that appears to be  
 9 the case.

10 **Q. Okay. How are Mt. Hawley's**  
 11 **underwriting guidelines provided to Bass?**

12 A. Do you mean in what medium  
 13 they're transmitted?

14 **Q. Yeah.**

15 A. I don't know.

16 **Q. Okay. Fair to say either**  
 17 **e-mail or physical mail?**

18 A. It would have to be. I know  
 19 that they have them.

20 **Q. Okay. So I'm going to**  
 21 **scroll down in this. Looking at the**  
 22 **underwriting guidelines, the Airbnb,**  
 23 **Vrbo, and other similar online rental**  
 24 **operations are listed under ineligible**  
 25 **risks, as you mentioned; is that correct?**

44

1 **Mt. Hawley ever receive a copy of the**  
 2 **policy that was eventually issued to**  
 3 **Beach Cruiser from Bass?**

4 A. Yes.

5 **Q. Yes? Was that prior to**  
 6 **issuance of the policy?**

7 A. I don't know, but probably  
 8 not.

9 **Q. Okay. Relatedly, was this**  
 10 **-- was Beach Cruiser's application for**  
 11 **insurance in this case referred to**  
 12 **Mt. Hawley?**

13 A. No.

14 **Q. Okay. And the same**  
 15 **questions with respect to the renewal of**  
 16 **the Mt. Hawley policy issued to Beach**  
 17 **Cruiser in this case. Would that have**  
 18 **ever been referred to Mt. Hawley by Bass?**

19 MR. DELAHUNT: Luke, can I  
 20 ask, are you referring to the  
 21 renewal of the policy at issue?

22 MR. KATZENMEIER: Yes.  
 23 BY THE WITNESS:

24 A. Now I'm confused because  
 25 there's two renewals. There's the

43

1 A. Yes.

2 **Q. What is the reason for the**  
 3 **inclusion of Airbnb, Vrbo, and similar**  
 4 **rental operations as ineligible risks?**

5 A. It's fairly standard in the  
 6 insurance industry that Airbnb, Vrbo, and  
 7 other similar types of rentals are very  
 8 short-term rentals with high turnover and  
 9 occupants and unfamiliarity with the  
 10 properties, which increases the risk of  
 11 loss.

12 **Q. Are all short-term rentals**  
 13 **ineligible risks?**

14 A. No.

15 **Q. In what circumstances would**  
 16 **short-term rentals not be ineligible?**

17 A. Well, certainly, it couldn't  
 18 be an Airbnb, Vrbo, or similar operation.  
 19 The rest of the answer, I would have to  
 20 defer to the underwriters for GBA, but  
 21 it's my understanding it's extremely rare  
 22 to issue a policy to a short-term rental.  
 23 And even in those rare cases, the premium  
 24 is certainly larger.

25 **Q. So, in this case, did**

45

1 initial policy, then a first renewal,  
 2 which I believe is the policy at issue in  
 3 the declaratory judgment. And then  
 4 there's a second renewal in the  
 5 subsequent year.

6 **Q. Okay. Let's go through both**  
 7 **of them. How about it? So the first**  
 8 **renewal, would it be correct to state**  
 9 **that is the '21 to '22 policy period?**

10 A. Yes.

11 **Q. Okay. And would that have**  
 12 **ever been referred to Mt. Hawley by Bass?**

13 A. It was not.

14 **Q. It was not. Okay. And you**  
 15 **mentioned a second renewal. Is that for**  
 16 **the '22 to '23 policy period?**

17 A. Yes.

18 **Q. Okay. And what date was**  
 19 **that renewal issued?**

20 A. I would have to see the  
 21 policy to answer that question.

22 **Q. Okay. Would that have been**  
 23 **referred to Mt. Hawley by Bass?**

24 A. I don't believe that was  
 25 either.



46

1 **Q. Okay. And for either of**  
 2 **those renewals, was there any**  
 3 **communication between Bass and Mt. Hawley**  
 4 **prior to the issuance of the renewal?**

5 A. I can't fully answer that  
 6 question because in my preparation for  
 7 this deposition, I only reviewed the  
 8 documents that had been produced in  
 9 discovery in the declaratory judgment  
 10 case; and the underwriting file for that  
 11 second renewal was not part of that  
 12 documentation.

13 **Q. Okay. Let's see. The**  
 14 **renewal that we just mentioned, the '22**  
 15 **to '23 policy period, is that also**  
 16 **subject to Mt. Hawley's now dismissed**  
 17 **recision claim in this case?**

18 A. I'm sorry.

19 MR. DELAHUNT: Can you read that  
 20 back?

21 (Record read as requested.)

22 MR. DELAHUNT: If you can  
 23 answer, go ahead.

24 MR. KATZENMEIER: I can  
 25 rephrase if not.

48

1 **Q. Yeah. Absolutely. Just let**  
 2 **me know if I'm going too fast or too**  
 3 **slow.**

4 A. Okay. You can jump to the  
 5 last page. Yes, I recognize this  
 6 document.

7 **Q. Okay. Can you tell me what**  
 8 **this document is?**

9 A. This was a dual purpose  
 10 letter sent to the insured to advise them  
 11 of a notice of rescission of the policy  
 12 and, alternatively, to assert the  
 13 coverage defense based on the amended  
 14 conditions endorsement.

15 **Q. Okay. And the date of this**  
 16 **letter is November 14, 2022, correct?**

17 A. Yes.

18 **Q. And I'm looking at the**  
 19 **Mt. Hawley policy number as GGL0026067.**  
 20 **Do you understand that to be connected to**  
 21 **the '21 to '22 policy period for the**  
 22 **Mt. Hawley policy?**

23 A. According to what's there in  
 24 the caption of that letter, yes.

25 **Q. Okay. Thank you. So**

47

1 BY THE WITNESS:

2 A. I think that calls for a  
 3 legal conclusion.

4 MR. DELAHUNT: I don't want  
 5 to interfere, but I will state I  
 6 don't know that's a legal  
 7 conclusion, but it would be  
 8 answered by the pleading prior to  
 9 withdrawal of the rescission claim.

10 I'm not going to answer the  
 11 question for the witness, but --

12 BY MR. KATZENMEIER:

13 **Q. I think I can -- Let's do it**  
 14 **another way.**

15 So I'll tell you what, I'm  
 16 going to stop sharing my screen on the  
 17 dwelling application. And I'm going to  
 18 pull up correspondence issued in this  
 19 case. Mr. Brownell, can you see my  
 20 screen?

21 A. Yes.

22 **Q. Okay. Are you familiar with**  
 23 **this document?**

24 A. Can I ask you to scroll  
 25 through it quickly to the end, please?

49

1 **following up on my earlier question,**  
 2 **before we get too deep into this, would**  
 3 **the 2022 to '23 renewal period you've**  
 4 **mentioned also be included in this notice**  
 5 **of rescission or does it just refer to the**  
 6 **'21, '22 policy period?**

7 A. It just refers to the '21,  
 8 '22 policy period.

9 **Q. So as we sit here today, as**  
 10 **far as you know, is the '22 to '23 policy**  
 11 **period still in effect?**

12 A. If you mean has that policy  
 13 been rescinded, no, it has not.

14 **Q. Okay. Thank you, sir. Did**  
 15 **Mt. Hawley accept a premium payment for**  
 16 **the '22 to '23 policy period?**

17 A. I assume it did.

18 **Q. Did Mt. Hawley accept a**  
 19 **premium payment for the '21 to '22**  
 20 **renewal period?**

21 A. I assume it did as well.

22 **Q. Okay. Was the premium for**  
 23 **the '21 to '22 period ever returned?**

24 A. I don't believe it was. I  
 25 believe it was offered, and this letter



50

1 will refer to itself in that regard.

2 **Q. And as far as you're aware,**  
3 **was that offer ever accepted?**

4 A. I don't believe it was.

5 **Q. So, speaking generally, what**  
6 **is your role, if any, in issuing**  
7 **insurance policies on behalf of**  
8 **Mt. Hawley?**

9 A. My role individually?

10 **Q. Yeah.**

11 A. I work in the Claims  
12 Department. I'm not an underwriter, so I  
13 don't have any role in underwriting  
14 coverage.

15 **Q. Okay. So I assume -- the**  
16 **same question as far as renewing**  
17 **policies. Do you have any role in**  
18 **renewing policies?**

19 A. Same answer.

20 **Q. Okay. And building on that,**  
21 **did you have any role in issuing or**  
22 **renewing the '21 to '22 renewal period**  
23 **for the Mt. Hawley policy at issue in**  
24 **this case?**

25 A. Individually, no.

52

1 below. That's why I was having you  
2 scroll down to the named insured form.

3 **Q. I can continue.**

4 A. It's coming. There it is.  
5 Yes. Okay. This appears to be the '21,  
6 '22 policy issued to Beach Cruiser.

7 **Q. Okay. And I'm going to zoom**  
8 **in just a little bit. Is that number --**  
9 **The policy number at the top of the**  
10 **screen, GGL0026067, is that consistent**  
11 **with the policy number on the letter I**  
12 **just showed you?**

13 A. I would have to see the  
14 letter again to confirm, but I believe  
15 that's the case, yes.

16 **Q. Okay. All right. I have it**  
17 **up for you right here.**

18 A. Yes, it is.

19 **Q. Okay. So I am going to take**  
20 **you down to the amended conditions**  
21 **endorsement. Is this the endorsement**  
22 **that is referred to in the complaint?**

23 A. Yes.

24 **Q. Okay. And this is the**  
25 **endorsement that Mt. Hawley is -- well,**

51

1 **Q. Okay. I'm going to --**  
2 **Actually, I don't remember whether we**  
3 **marked the November 14th letter as an**  
4 **exhibit. If not, let's mark it as**  
5 **Nationwide Exhibit D.**

6 (Nationwide Deposition Exhibit D  
7 marked for identification.)

8 BY MR. KATZENMEIER:

9 **Q. Okay. I'm going to share my**  
10 **screen again with you, Mr. Brownell. Can**  
11 **you see my screen, Mr. Brownell?**

12 A. Yes.

13 **Q. Okay. Do you recognize this**  
14 **document?**

15 A. Can you scroll to the top?

16 **Q. Sure.**

17 A. Can you scroll down until I  
18 say stop?

19 **Q. Yeah. Absolutely.**

20 A. I'm just looking for a form  
21 that identifies Beach Cruiser as the  
22 insured.

23 **Q. Presumably, that would be in**  
24 **the declarations page, correct?**

25 A. It actually refers to forms

53

1 **has asserted that Beach Cruiser has made**  
2 **representations based on?**

3 A. This is the endorsement that  
4 Mt. Hawley is contending precludes  
5 coverage for this loss.

6 **Q. Okay. So is this a standard**  
7 **endorsement in Mt. Hawley's policies?**

8 A. Yes.

9 **Q. Okay. Now when we say**  
10 **"standard," does that mean all Mt. Hawley**  
11 **policies contain this form?**

12 A. I know, in the GBA product,  
13 this form is mandatory on all policies.  
14 And for other Mt. Hawley policies that  
15 are not part of the GBA product, I do  
16 believe it is also mandatory on theirs as  
17 well, but I know for certain that this is  
18 a mandatory endorsement on all policies  
19 issued by GBA -- or through the GBA  
20 product.

21 **Q. Okay. And do you know how**  
22 **long has this been a standard required**  
23 **endorsement?**

24 A. Well, since early 2021,  
25 March, I believe.

54

1 **Q. March 2021. Okay. And I'm**  
 2 **going to -- it looks like I don't have it**  
 3 **bookmarked here, but it's actually the**  
 4 **next page. So I'm looking at the service**  
 5 **of suit and conditions endorsement. Can**  
 6 **you see that on my screen?**

7 A. Yes.

8 **Q. Okay. Under Condition 1,**  
 9 **Section BB, it says: Choice of law.**

10 **It says: All matters**  
 11 **arising hereunder, including questions**  
 12 **related to validity, interpretation,**  
 13 **performance, and enforcement for this**  
 14 **policy shall be determined in accordance**  
 15 **with the law and practice of the State of**  
 16 **New York notwithstanding New York's**  
 17 **conflicts of law rules.**

18 **Did I read that correctly?**

19 A. Yes.

20 **Q. Okay. Do you understand**  
 21 **that to mean that New York's laws -- that**  
 22 **this policy must be interpreted in**  
 23 **accordance with New York's laws?**

24 A. That's a legal question,  
 25 but, yes, that's my understanding.

56

1 **responsible for issuing the November 14th**  
 2 **recision letter?**

3 A. It has two signatories,  
 4 David Hoffman and Eric White.

5 **Q. Okay. And we've discussed**  
 6 **Hoffman briefly, I believe. Who is Eric**  
 7 **White?**

8 A. He is the head underwriter  
 9 for the GBA product.

10 **Q. Okay. And have you ever**  
 11 **communicated with Mr. White in connection**  
 12 **with this Mt. Hawley policy?**

13 A. Yes.

14 **Q. Okay. When did you**  
 15 **communicate with Mr. White in connection**  
 16 **with this Mt. Hawley policy?**

17 A. Tuesday afternoon.

18 **Q. Tuesday afternoon. Is that**  
 19 **the only time, or is that the last time?**

20 A. The only time. Oh. There  
 21 was a five or ten-minute follow-up  
 22 conversation with him yesterday  
 23 afternoon.

24 **Q. Okay. And what was the**  
 25 **subject of that conversation?**

55

1 **Q. Okay. Now, as far as you**  
 2 **understand, would that include statutes,**  
 3 **regulations?**

4 A. What statutes or  
 5 regulations?

6 **Q. Just New York's statutes and**  
 7 **regulations. Put another way: If there**  
 8 **were states whose statutes and**  
 9 **regulations applied to the interpretation**  
 10 **of this policy, would it be New York's?**

11 A. I'm not sure that this  
 12 endorsement makes this policy subject to  
 13 any particular New York statute.

14 **Q. I guess put another way: Is**  
 15 **this choice of law provision here why**  
 16 **recision was issued pursuant to -- or**  
 17 **recision was asserted, I'll say,**  
 18 **according to New York Insurance Law 3105**  
 19 **in the recision letter?**

20 A. That's a legal question, and  
 21 that would have been the purview of claim  
 22 counsel in conjunction with outside  
 23 coverage counsel. I can't answer that  
 24 question.

25 **Q. Okay. Who was the party**

57

1 A. Both of those conversations  
 2 occurred in preparation for this  
 3 deposition with Mr. Delahunt, our  
 4 attorney, present.

5 **Q. Okay. Let's see here. The**  
 6 **New York choice of law provision that I**  
 7 **showed you earlier on the Mt. Hawley**  
 8 **policy -- and if you would like me to go**  
 9 **back to that, I can. Just let me know --**  
 10 **is that standard in Mt. Hawley policies?**

11 A. It is now.

12 **Q. When you say "now," what do**  
 13 **you mean?**

14 A. That endorsement has only  
 15 existed for a few years, three to  
 16 four years, so, obviously, before that,  
 17 we wouldn't have been using it.

18 **Q. Okay. Did Mt. Hawley have a**  
 19 **different standard choice of law prior to**  
 20 **that?**

21 A. Had a different service of  
 22 suit endorsement, yes.

23 **Q. Did that previous service of**  
 24 **suit endorsement contain a choice of law**  
 25 **provision?**

58

1 A. I don't remember.

2 **Q. Okay. Going to -- I'm going**  
3 **to return to the policy. And I believe**  
4 **we should mark the Mt. Hawley policy for**  
5 **the '21 to '22 period as Nationwide**  
6 **Exhibit E, I think we're on now.**

7 **(Nationwide Deposition Exhibit E**  
8 **marked for identification.)**

9 THE COURT REPORTER: Yes,  
10 we're on E.

11 MR. KATZENMEIER: Okay.

12 Thank you very much.

13 BY MR. KATZENMEIER:

14 **Q. Mr. Brownell, are you**  
15 **familiar with the terms and endorsements**  
16 **of this particular policy?**

17 A. Generally, yes.

18 **Q. Okay. As far as you are**  
19 **aware, is there a -- any exclusion or**  
20 **endorsement to the policy specifically**  
21 **referring to Airbnb or Vrbo?**

22 A. I don't think those terms  
23 are referenced by name in the policy, no.

24 **Q. How about any similar**  
25 **short-term rental service specifically or**

60

1 form. Kevin can answer.

2 BY THE WITNESS:

3 A. I'm not really sure what you  
4 mean by "a reason," but this letter is  
5 dated November 14th, 2022. It says what  
6 it says, and it is the sum and substance  
7 of the coverage investigation and  
8 coverage evaluation.

9 **Q. Well, let's put it this way:**  
10 **Take me through the process that resulted**  
11 **in this letter after final confirmation**  
12 **of the use of the property in**  
13 **September 2022.**

14 A. David Hoffman would have  
15 considered all those facts that he had  
16 acquired during his investigation. He  
17 would have reviewed the policy and likely  
18 re-reviewed the policy. And then he  
19 likely would have consulted with claim  
20 counsel.

21 **Q. Okay. And all of this would**  
22 **have occurred in September/October 2022;**  
23 **is that --**

24 A. It would have occurred  
25 between September 2, 2022, and whatever

59

1 **generically?**

2 A. No.

3 **Q. Why is that? Why would**  
4 **there not be any such exclusion or**  
5 **endorsement?**

6 A. There wouldn't need to be.  
7 It would have been handled during the  
8 underwriting process.

9 **Q. Okay. Would that have --**  
10 **Strike that.**

11 **Okay. So I'm looking at the**  
12 **November 14th letter noticing the**  
13 **recision of the Mt. Hawley policy. This**  
14 **is Nationwide Exhibit D. What led to the**  
15 **decision to issue this recision letter?**

16 A. Generally speaking, it would  
17 have been the sum and substance of David  
18 Hoffman's coverage investigation and most  
19 likely consultation with claim counsel.

20 **Q. Okay. And is there a reason**  
21 **that this letter was not issued until**  
22 **November 14th when, as you said, final**  
23 **confirmation of the use of the property**  
24 **took place in September?**

25 MR. DELAHUNT: Object to the

61

1 date this particular letter was drafted  
2 on, which I assume would have been  
3 shortly before November 14th, 2022.

4 MR. KATZENMEIER: Okay.  
5 Let's see. I have some more, but  
6 this might be a good time to take  
7 a break since we're at an hour and  
8 a half. Does that sound good to  
9 you guys?

10 MR. DELAHUNT: Yes. Sure.  
11 Do you want to say 10:35, 10:40?  
12 What do you prefer?

13 MR. KATZENMEIER: You're  
14 working on Central Time, aren't  
15 you?

16 MR. DELAHUNT: I am. Sorry.  
17 Yeah. Just adjust it an hour.

18 MR. KATZENMEIER: Yeah. I  
19 think 11:35 should work for us.

20 MR. DELAHUNT: Okay. We'll  
21 see you then.

22 (A short break was had.)

23 BY MR. KATZENMEIER:

24 **Q. So I'm going to pull up**  
25 **another document on my screen for you,**

62

1 **Mr. Brownell. Can you see my screen**  
2 **right now?**

3 A. Yes.

4 **Q. And can you read what's on**  
5 **it? I can zoom in if not.**

6 A. No. That's fine. I can  
7 read it.

8 **Q. Okay. Does this look**  
9 **familiar to you?**

10 A. Yes. It looks like a  
11 printout of our claim file notes.

12 **Q. Okay. Yeah. And I'll tell**  
13 **you right now it's not the full claim**  
14 **notes. It's just a brief portion of it.**  
15 **These claims notes were authored by David**  
16 **Hoffman, correct?**

17 A. Yes.

18 **Q. That's what it says right**  
19 **here. I'm going to scroll down to this**  
20 **August 18, 2022, entry. And is it**  
21 **correct that that entry entered by David**  
22 **Hoffman says: Info from Airbnb website.**  
23 **See screenshots from Airbnb website saved**  
24 **to file on this date. Reflects Flyway**  
25 **joined as host in July 2018.**

64

1 **example, knew that the property was being**  
2 **used as a short-term rental and issued**  
3 **the policy anyway without referring it to**  
4 **Mt. Hawley, what would be Mt. Hawley's, I**  
5 **suppose, process of resolving that**  
6 **dispute with Bass?**

7 MR. DELAHUNT: I'm going to  
8 object to the form. You can  
9 answer, if you can.

10 BY THE WITNESS:

11 A. That would be a clear  
12 violation of the underwriting guidelines  
13 provided by Mt. Hawley to Bass. And  
14 beyond that, I'm unaware of it ever  
15 happening, so I'm not really sure if I  
16 can answer that question as to what the  
17 process would be.

18 **Q. Okay. If there ever were an**  
19 **instance where Bass had issued a policy**  
20 **where a short-term rental was involved**  
21 **and Mt. Hawley had discovered that, would**  
22 **there be a record of that?**

23 MR. DELAHUNT: Same  
24 objection.

25 BY THE WITNESS:

63

1 **Is that correct?**

2 A. Yes.

3 **Q. And reflects a user review**  
4 **of the subject property dating back to**  
5 **September 2018; is that right?**

6 A. It says that, yes.

7 **Q. Okay. So my question is:**  
8 **What would have prompted Mr. Hoffman to**  
9 **investigate Airbnb's website in**  
10 **connection with this claim note?**

11 A. That likely would have been  
12 his initial conversation with the insured  
13 wherein he was advised that this property  
14 was being used as an Airbnb property at  
15 the time of the loss.

16 **Q. Okay. Going back to the**  
17 **supplemental dwelling application we**  
18 **discussed earlier, are there ever**  
19 **instances where -- as far as you're**  
20 **aware, where Bass has issued policies**  
21 **with short-term rentals involved without**  
22 **referring them to Mt. Hawley?**

23 A. I'm not aware of any such  
24 instances.

25 **Q. Okay. And so if Bass, for**

65

1 A. I'm not sure.

2 **Q. Okay.**

3 A. Again, I'm not aware that  
4 that's ever happened.

5 **Q. If Bass had known that the**  
6 **property owned by Beach Cruiser was being**  
7 **used as a short-term rental and issued**  
8 **the policy anyway without referring the**  
9 **matter to Mt. Hawley, would that still be**  
10 **a basis for denial of coverage based on**  
11 **Mt. Hawley's amended conditions**  
12 **endorsement?**

13 MR. DELAHUNT: Same  
14 objection.

15 BY THE WITNESS:

16 A. It's a hypothetical, so it's  
17 difficult to answer a hypothetical that  
18 didn't actually happen, but it very well  
19 could be.

20 **Q. Okay. Would Mt. Hawley,**  
21 **generally speaking, be entitled to deny**  
22 **coverage based on the amended conditions**  
23 **endorsement in the policy even if the**  
24 **mistake was a typo?**

25 MR. DELAHUNT: Same

66

1 objection.

2 BY THE WITNESS:

3 A. It's a little difficult to  
4 respond to that question because the  
5 answer to that question on the  
6 supplemental application isn't one that  
7 the insured -- or the retail agent can  
8 type an answer into, so there wouldn't be  
9 a typo. They have to check a box yes or  
10 no.

11 Q. So I mentioned we're  
12 speaking generally now. So putting  
13 aside, for the moment, the specific  
14 supplemental dwelling application filled  
15 out or submitted on behalf of Beach  
16 Cruiser. Generally speaking, if Bass had  
17 received an application with a typo in it  
18 and then issued a policy without  
19 referring to Mt. Hawley based on that  
20 application containing a typo, would a  
21 typo -- could a typo serve as the basis  
22 for denial under the amended conditions  
23 endorsement in the Mt. Hawley policy?

24 MR. DELAHUNT: Same  
25 objection.

68

1 Q. Yes, sir.

2 A. Okay. Yes, I do recognize  
3 this document.

4 Q. Okay. What is the document  
5 that I have pulled up?

6 A. This is a letter that David  
7 Hoffman sent to Beach Cruiser to  
8 reiterate its prior coverage position,  
9 which we do when an amended complaint has  
10 been filed.

11 Q. Okay. And was it an amended  
12 complaint filed in this case that  
13 prompted the sending of this letter?

14 A. Yes.

15 Q. Okay. Is there any change  
16 in Mt. Hawley's position, from the  
17 previous letter to this letter, with  
18 regard to its position on defense in the  
19 underlying action?

20 A. No. And, as a matter of  
21 fact, the prior letter you're referring  
22 to, as it's stated there in the second  
23 paragraph, is fully incorporated into  
24 this letter.

25 Q. Okay. So the two letters

67

1 BY THE WITNESS:

2 A. There's no way to answer  
3 that question generally. It would really  
4 depend on the particular facts and  
5 circumstances surrounding the typo at  
6 issue.

7 Q. Okay. Let's see. I believe  
8 I've got another exhibit to pull up for  
9 you, but I believe we need to mark the  
10 claim note I have presently as Nationwide  
11 Exhibit F.

12 (Nationwide Deposition Exhibit F  
13 marked for identification.)

14 BY MR. KATZENMEIER:

15 Q. Okay. I'm pulling up  
16 another document for you, Mr. Brownell.  
17 Do you see my screen?

18 A. Yes.

19 Q. And can you read the  
20 document that I've pulled up?

21 A. Yes.

22 Q. Okay. Do you recognize the  
23 document that I've pulled up?

24 A. Can you scroll to the  
25 signature page, please?

69

1 are consistent with each other, in other  
2 words?

3 A. Other than the fact that  
4 each one is in reference to a different  
5 version of the complaint, yes.

6 Q. Okay. And you said it was  
7 standard to issue these types of letters  
8 when an amended complaint is filed; is  
9 that correct?

10 A. Yes.

11 Q. Okay. And whose decision  
12 would it have been to issue this  
13 follow-up letter?

14 A. Mr. Hoffman's.

15 Q. Mr. Hoffman. Is there  
16 anybody else involved in that decision?

17 A. No.

18 Q. And would it have been  
19 Mr. Hoffman drafting this letter?

20 A. Usually. Typically, it  
21 would be, yes.

22 Q. Okay. And, just to cover  
23 all the bases, the policy number listed  
24 on this letter is the same as on the  
25 prior letter and on the '21 to '22



70

1 renewal, correct?

2 A. Yes.

3 Q. Okay. Thank you. And I  
4 believe we should mark this as Nationwide  
5 Exhibit G, if I remember my alphabet.

6 And this follow-up letter,  
7 do you know when the decision to issue a  
8 follow-up letter would have been made?

9 (Nationwide Deposition Exhibit G  
10 marked for identification.)

11 BY THE WITNESS:

12 A. Sometime following receipt  
13 and review of the amended complaint.

14 Q. Okay. Thank you. Is  
15 Mt. Hawley seeking the recovery of  
16 attorney's fees that are already expended  
17 to defense of the underlying action as  
18 part of its DJ, or declaratory judgment  
19 action? Sorry.

20 A. I would have to refer you to  
21 the DJ complaint itself.

22 Q. Okay. Do you know the  
23 extent of attorney's fees or defense  
24 costs incurred by Mt. Hawley to date with  
25 respect to the underlying action?

72

1 that would have made the final call as to  
2 whether to dismiss that recision count?

3 A. Ms. Kanellakes.

4 Q. That was Dana Kanellakes; is  
5 that correct?

6 A. Yes.

7 Q. Okay. I have another letter  
8 here. We'll stop sharing my screen.

9 Okay. I'm going to share my  
10 screen with you once again, Mr. Brownell.  
11 Can you see my screen?

12 A. Yes.

13 Q. Okay. And can you read what  
14 is on my screen right now?

15 A. Yes.

16 Q. Okay. And this is a letter  
17 filed in the declaratory judgment action  
18 by your counsel, correct?

19 A. I don't know if it was filed  
20 or not.

21 Q. Do you see at the time top  
22 of the screen this blue lettering, blue  
23 text?

24 A. Yes.

25 Q. Does that say filed on

71

1 A. I don't.

2 Q. You don't. Okay. Does  
3 Mt. Hawley have those figures available  
4 anywhere?

5 A. Yes.

6 Q. Okay. So going back to the  
7 declaratory judgment complaint we were  
8 just talking about, is it correct that  
9 Mt. Hawley has agreed to dismiss its  
10 recision count in the first amended  
11 declaratory judgment complaint in this  
12 action?

13 A. It's my understanding that  
14 the recision count was withdrawn, yes.

15 Q. Okay. Without -- Again  
16 here, I'm not asking for advice of  
17 counsel or anything, just purely  
18 administrative. What was the internal  
19 procedure within Mt. Hawley leading up to  
20 the dismissal of the recision count?

21 A. That would have been a legal  
22 strategic question addressed by  
23 Mt. Hawley's claim counsel and outside  
24 coverage counsel.

25 Q. Okay. Who is the individual

73

1 September 11, 2023?

2 A. Yes.

3 Q. Okay. So would it be  
4 reasonable to assume this was filed in  
5 the declaratory judgment action on  
6 September 11, 2023?

7 A. I honestly don't know if  
8 this was filed or not, but that's what it  
9 appears.

10 Q. I only have a brief question  
11 on this letter. So this is -- this  
12 letter appears to have been signed by  
13 your counsel; is that correct?

14 A. Yes.

15 Q. Okay. And I just want to  
16 draw your attention to this one sentence  
17 here. I can highlight it. Let me know  
18 if you can see my highlighting.

19 A. I can see it.

20 Q. Okay. It says: However,  
21 after internally reviewing the matter,  
22 Mt. Hawley agreed to discontinue that  
23 cause of action only.

24 Is that correct?

25 A. Yes.



74

**Q. Reading the rest of the paragraph -- and we can take a moment if you need to -- do you understand the reference to that cause of action only within that paragraph to refer to the recision cause of action?**

A. That's how I understand it, yes.

**Q. Okay. My specific question here is: The sentence's reference to "after internally reviewing the matter," was there any document or fact discovered during your internal review that led to the decision to withdraw the recision cause of action?**

A. The internal review referenced in this letter is consultation between Mr. Delahunt and Ms. Kanellakes.

**Q. So I'm not asking you for anything your counsel told you, but is there any document in Mt. Hawley's possession that led to the decision to withdraw the recision cause of action?**

A. I don't have any information

76

don't worry about it.

Luke, is there any way you can switch the sharing screen and give me rights to share as well? The court reporter can?

MR. KATZENMEIER: I believe the reporter could. I don't think I'm the host of this. Am I correct in that, Ms. Kuipers?

THE COURT REPORTER: I believe that the tech that's on is the host.

MR. PIERANTONI: It looks like I can. Okay. One second.

Okay. Did it show up?

THE WITNESS: Yes.

MR. PIERANTONI: It has.

Okay. It showed up for you guys, but not for me, so ...

BY MR. PIERANTONI:

**Q. Okay. All right. Mr. Brownell, you understand that you're giving your deposition testimony today not individually as a fact witness, but on behalf of the company, Mt. Hawley**

75

regarding the internal review referenced in this letter other than what I've been told by counsel.

(Nationwide Deposition Exhibit H marked for identification.)

MR. KATZENMEIER: Okay. And this was filed in the action. We might as well go ahead and mark this as Nationwide Exhibit H.

Now I might have a bit more after reviewing stuff, but, Ray, if you -- do you have anything?

MR. PIERANTONI: Yeah. I have some questions.

CROSS-EXAMINATION  
BY MR. PIERANTONI:

**Q. Mr. Brownell, I sort of get confused with the name identification with the photo as well, so I apologize if I call you Mr. Delahunt at some point.**

MR. DELAHUNT: We switched computers because Kevin's wasn't --

MR. PIERANTONI: It's okay. It's okay. It will be on me, so

77

**and/or RLI?**

A. Yes.

**Q. Okay. And you're here to -- you're appearing pursuant to this notice of deposition that appears in front of you. Would you like to look at the entire document just to be sure?**

A. That appears to be it, yes.

**Q. I'll scroll down just to show you the signature at the bottom, okay?**

A. Yes.

**Q. So who designated you to be the corporate designee for these topics, for the topics listed, 1 through 14 on pages 6 and 7?**

A. Claim counsel.

**Q. Claim counsel. Okay. And that's Ms. Kanelkallakes (phonetic)?**

A. Kanellakes.

**Q. Kanellakes. I'm sorry. Why were you designated to testify as to all these topics?**

MR. DELAHUNT: Objection, but you can answer as long as you

78

1 don't testify to any  
2 communications with counsel.  
3 BY MR. PIERANTONI:  
4 **Q. Absolutely not. I'm not**  
5 **asking for any privileged communications.**

6 A. I don't have any independent  
7 knowledge as to why I was selected other  
8 than what I was told by claim counsel.

9 **Q. Do you understand the**  
10 **subject matter areas, 1 through 14, that**  
11 **you are testifying about? Do you have**  
12 **lack of understanding as to what these**  
13 **topics are about?**

14 A. Yes, with the exception that  
15 I'm not privy to any communications or  
16 discussions that went on between and  
17 among counsel in this case as to the  
18 scope of those topics and what may or may  
19 not have been agreed to or eliminated,  
20 but I can see the ones that appear on the  
21 screen.

22 **Q. Okay. But you are the**  
23 **person that has been designated by**  
24 **Mt. Hawley as the person most**  
25 **knowledgeable about each of these topics,**

80

1 BY MR. PIERANTONI:

2 **Q. Okay. Is there anyone else**  
3 **in Mt. Hawley that's more knowledgeable,**  
4 **to your knowledge, about each of these**  
5 **topics or any of these topics than you?**

6 A. I'm not sure what that  
7 means.

8 **Q. Sure. Is there anybody that**  
9 **you're aware of at Mt. Hawley who is more**  
10 **knowledgeable than you about any of these**  
11 **topics?**

12 A. It depends on which topic  
13 you're talking about. There are various  
14 people in this company that have various  
15 different roles and have different  
16 knowledge levels about different topics.

17 **Q. Okay. Well, we can go**  
18 **through each. It's not a long list.**  
19 **With regard to the amended**  
20 **conditions endorsement that Mt. Hawley is**  
21 **relying on in the first amended**  
22 **complaint, are you aware of anybody that**  
23 **has more knowledge than you about the**  
24 **basis for this topic?**

25 A. I have two issues with that

79

1 **correct?**

2 MR. DELAHUNT: Objection.  
3 There's no representation under  
4 30(b)(6) that he's most  
5 knowledgeable. He's been produced  
6 as a 30(b)(6) witness to be  
7 reasonably prepared within the  
8 federal rules.

9 MR. PIERANTONI: I would  
10 dispute that contention.  
11 BY MR. PIERANTONI:

12 **Q. Let me ask this --**

13 MR. DELAHUNT: Ray, with all  
14 due respect, you can dispute it.  
15 If you wanted a 30(b)(1)  
16 deposition of the person most  
17 knowledgeable, that's how you  
18 notice it. That's not how  
19 30(b)(6) works.

20 MR. PIERANTONI: I  
21 understand how 30(b)(6) works.

22 MR. DELAHUNT: It's not our  
23 obligation to provide the most  
24 knowledgeable, just a prepared  
25 witness.

81

1 question. One, I don't know what other  
2 people's knowledge are. I only know what  
3 my knowledge is. And, No. 2, I'm not  
4 sure what more knowledge about an  
5 endorsement would mean.

6 **Q. Okay. Mr. Eric Wright**  
7 **[sic], you remember you mentioned him**  
8 **today?**

9 A. Eric White, yes.

10 **Q. Right. And he was a**  
11 **signatory to the initial disclaimer**  
12 **letter, I believe?**

13 A. Yes.

14 **Q. Do you know if you had**  
15 **conversations -- and I'm not asking you**  
16 **to divulge because I know counsel was**  
17 **present. Do you know, from those**  
18 **conversations, if you walked away getting**  
19 **the impression that Mr. White was more**  
20 **knowledgeable than you about any of these**  
21 **topics?**

22 A. No, other than he is the one  
23 most familiar with the underwriting  
24 process for the product that he oversees.

25 **Q. So he would be more**

82

1 knowledgeable than you about the  
2 underwriting process; is that a fair  
3 statement?

4 A. It would really depend on  
5 what the question would be.

6 Q. Generally speaking, though,  
7 is he more knowledgeable about the  
8 underwriting process than you are since  
9 your background is in claims?

10 A. I suppose that's true.

11 MR. PIERANTONI: Okay.

12 Luke, do you want to go back in,  
13 and then I can follow up later or

14 --

15 MR. KATZENMEIER: You can  
16 keep going for now if you want.

17 I've got a couple more, but I'm  
18 writing them down.

19 BY MR. PIERANTONI:

20 Q. Okay. Mr. Brownell, how  
21 important is it that Bass follow  
22 Mt. Hawley's underwriting guidelines?

23 A. I would say it's very  
24 important.

25 Q. Is it expected that they're

84

1 THE COURT REPORTER: I'm  
2 sorry. I didn't hear your  
3 objection, if you objected to  
4 that.

5 MR. DELAHUNT: Yes. I just  
6 said objection.

7 BY MR. PIERANTONI:

8 Q. Earlier today, you were  
9 asked about the documents reviewed. Do  
10 you remember that, Mr. Brownell?

11 A. Yeah.

12 Q. Okay. And you said that you  
13 had generally reviewed the complaint, but  
14 not, I guess, fully?

15 A. I didn't read it word for  
16 word, but I have seen our declaratory  
17 judgment complaint at some point.

18 Q. Okay. Were you able to  
19 review the counterclaims filed by my  
20 clients? Just for the record, my  
21 clients, as you know, are the insureds,  
22 Flyway and Beach Cruiser. Were you able  
23 to review the counterclaims that were  
24 filed against Mt. Hawley?

25 A. No, I have not.

83

1 to follow those guidelines strictly?

2 A. Yes.

3 Q. And not deviate from them,  
4 right?

5 A. Correct.

6 Q. And you stated that not to  
7 your knowledge, you're not aware at least  
8 of Bass ever deviating from those  
9 guidelines, correct? That's your  
10 testimony today?

11 A. Yes.

12 Q. But it doesn't mean that it  
13 didn't happen, correct?

14 MR. DELAHUNT: Form.

15 BY THE WITNESS:

16 A. That's true.

17 Q. Okay. Is it possible that  
18 Mr. Wright might be aware of an instance  
19 where Bass -- Since he's the head of  
20 underwriting, is it possible that  
21 Mr. Wright is more knowledgeable or might  
22 have knowledge as to Bass deviating from  
23 those guidelines that you're not aware  
24 of?

25 A. It's possible.

85

1 Q. Are you aware that the  
2 counterclaims -- one of the counterclaims  
3 involves the fact that a premium payment  
4 was received by Mt. Hawley for renewal of  
5 the policy on the 2022, 2023 period?

6 A. The only information I have  
7 regarding that topic would be what I've  
8 learned from counsel.

9 Q. And are you aware that the  
10 allegations -- one of the allegations in  
11 the counterclaims is that Mt. Hawley  
12 cashed that premium after knowing  
13 everything that they needed to know --  
14 Well, let's rephrase that.

15 Are you aware that the  
16 allegation claims that Mt. Hawley cashed  
17 that premium after being made aware of  
18 the short-term rentals that existed at  
19 the property?

20 MR. DELAHUNT: Objection.

21 BY THE WITNESS:

22 A. I am aware that that is  
23 Beach Cruiser's contention, yes.

24 Q. And are you aware if the  
25 premium that was charged for the 2202,

86

1 **2023 period was significantly different**  
2 **than the premium for the previous year?**

3 A. I don't know what the  
4 relative premiums were. I would have to  
5 look at the policy declarations pages to  
6 answer that question.

7 **Q. Okay. You testified earlier**  
8 **that the -- Mr. Hoffman became aware of**  
9 **the short-term rentals at a certain**  
10 **point, correct?**

11 A. Yes.

12 **Q. Do you recall what time**  
13 **period that was -- the earliest time**  
14 **period he became suspicious of the**  
15 **short-term rentals?**

16 MR. DELAHUNT: Objection.  
17 BY THE WITNESS:

18 A. I don't believe it was  
19 anything regarding suspicion. I know  
20 that at one -- on an early, if not the  
21 first phone call with the insured that  
22 Mr. Hoffman had, he learned during that  
23 phone call that this property at issue,  
24 at the time of the loss, was being rented  
25 out through Vrbo and Airbnb.

88

1 being used as short-term rentals, and  
2 they answered no.

3 MR. PIERANTONI: Luke, is it  
4 possible to bring up that  
5 application?

6 MR. KATZENMEIER: The  
7 application for insurance?

8 MR. PIERANTONI: Yeah.

9 MR. KATZENMEIER: Yeah, I  
10 can do that. I believe you will  
11 have to stop sharing your screen  
12 for me.

13 BY MR. PIERANTONI:

14 **Q. Okay. Is this the**  
15 **application? And I'm referring -- I know**  
16 **it's a supplemental application, so if I**  
17 **use the terms interchangeably, I'm**  
18 **referring to this document so we're on**  
19 **the same page.**

20 **Is this the application that**  
21 **you're referring to with regard to the**  
22 **answer to the question that represents**  
23 **the misrepresentation in this case?**

24 A. Yes.

25 **Q. Okay. And what question is**

87

1 **Q. So there's no evidence that**  
2 **you have on behalf of Mt. Hawley -- Since**  
3 **you're testifying on their behalf,**  
4 **there's no evidence that Mt. Hawley has**  
5 **of any nefarious conduct taken by my**  
6 **client to hide the ball from Mt. Hawley**  
7 **on the short-term rentals?**

8 MR. DELAHUNT: Objection.  
9 BY THE WITNESS:

10 A. Other than the  
11 misrepresentation on the supplemental  
12 application, no.

13 **Q. Okay. And in what way was**  
14 **that misrepresentation? Let's focus on**  
15 **the application for a second.**

16 **In what way was the --**  
17 **Specifically, what way was the**  
18 **application misrepresenting anything that**  
19 **led Mt. Hawley to dispute coverage?**

20 A. I would need to see the  
21 verbiage of that particular question on  
22 the supplemental application to fully  
23 answer that question, but, generally, the  
24 insured was asked if the properties for  
25 which they were seeking insurance were

89

1 **that again?**

2 A. It's part 2 of Question No.  
3 3.

4 **Q. Right. And if you could**  
5 **read that out loud for the record.**

6 A. "Are any properties rented  
7 by the day or by the week?"

8 **Q. And the answer to that**  
9 **was ...**

10 A. No.

11 **Q. Okay. Now, that's a part 2**  
12 **to the question, correct?**

13 A. Yes.

14 **Q. Part 1 to the question asks**  
15 **what?**

16 A. "What is the average monthly  
17 rent?"

18 **Q. Okay. And did my client**  
19 **answer that question?**

20 A. Through their retail agent,  
21 yes.

22 **Q. Well, the answer is provided**  
23 **in the, application, correct?**

24 A. Correct.

25 **Q. And what is the answer to**

90

1 **what is the average monthly rent?**

2 A. For a one-bedroom property,  
3 \$1,000, for a two-bedroom property --  
4 it's a little small, but it looks like  
5 \$1,800. And then for a three-bedroom, it  
6 looks like \$3,000, but the print's a  
7 little small.

8 **Q. So is it safe to assume, in**  
9 **answering that question, that they were**  
10 **acknowledging that they were renting out**  
11 **the property on a monthly basis?**

12 MR. DELAHUNT: Objection.  
13 BY THE WITNESS:

14 A. It indicates that they were  
15 being paid for renting out that property  
16 on a monthly basis.

17 **Q. Well, you would agree a**  
18 **tenant wouldn't pay for the rent of a**  
19 **property unless it was being rented and**  
20 **that tenant lived in it, correct?**

21 MR. DELAHUNT: Objection.  
22 BY THE WITNESS:

23 A. Yes, but you can have a  
24 property that's rented out for two years  
25 with a monthly rent, and you can have a

92

1 BY THE WITNESS:

2 A. It doesn't make that  
3 distinction.

4 **Q. Right. So it could be for**  
5 **short-term rentals as well, can't it?**

6 MR. DELAHUNT: Objection.  
7 BY THE WITNESS:

8 A. You would make the  
9 assumption, based on how this application  
10 is responded to, that it would not be  
11 because they answered no to the question  
12 "are there any properties rented by the  
13 day or by the week."

14 **Q. I understand that, but we're**  
15 **focusing on part A, right? And all I'm**  
16 **asking you, with regard to part A: Is it**  
17 **a fair assumption that it may be a**  
18 **monthly rental for, let's say, a**  
19 **six-month rental?**

20 A. That portion of the question  
21 doesn't reference the length of the  
22 lease. It simply is asking how much  
23 money do the tenants pay per month for  
24 those properties.

25 **Q. That's correct. I agree.**

91

1 property that's rented for two months  
2 with a monthly rent.

3 **Q. So it's not really clear, is**  
4 **it?**

5 MR. DELAHUNT: Objection.  
6 Ray, I'm going to direct him not  
7 to answer a question that that's  
8 argumentative.

9 MR. PIERANTONI: You can't  
10 direct him not to answer a  
11 question. It's a fair question.  
12 BY MR. PIERANTONI:

13 **Q. So I'll ask it again. Is it**  
14 **fair to say that this question is not**  
15 **clear as to whether or not it's a monthly**  
16 **rental in the course of a long-term lease**  
17 **or a short-term lease?**

18 A. I don't think it's not  
19 unclear because it's a separate question  
20 from the subpart below it.

21 **Q. Okay. Well, how do we know**  
22 **that part A of the question refers only**  
23 **to long-term rentals? How do we know**  
24 **that?**

25 MR. DELAHUNT: Objection.

93

1 **However, my question is really just**  
2 **asking: Are you able to tell from that**  
3 **question that the monthly rent is with**  
4 **regard to a long-term lease, a six-month**  
5 **lease, a three-month lease, a nine-month**  
6 **lease, a five-year lease? Are you able**  
7 **to tell that from that question?**

8 A. From that question, no.

9 **Q. Right. And we recall that**  
10 **the underwriting guidelines from**  
11 **Mt. Hawley define short-term rentals as**  
12 **anything under 12 months, correct?**

13 A. Yes.

14 **Q. Okay. Earlier, you**  
15 **testified, sir, that you were aware of**  
16 **Mr. Hoffman's communications on the**  
17 **claim, but you did not necessarily**  
18 **discuss with Hoffman anything with regard**  
19 **to the claim; is that what you testified**  
20 **to earlier? I just want to make sure**  
21 **that's clear.**

22 A. That's correct. There was a  
23 -- In conjunction with a call that  
24 Mr. Delahunt was participating in, we did  
25 bring in Mr. Hoffman to ask him one



94

1 specific question, but that's the extent  
2 of any of my communications with him  
3 regarding this claim.

4 **Q. Was that during the meeting**  
5 **that you attended with Mr. Wright on**  
6 **either -- I think you said this past**  
7 **Tuesday or yesterday?**

8 A. No. Mr. White was not on  
9 that call.

10 **Q. Okay. Are there any**  
11 **discussions you had with Mr. Hoffman**  
12 **regarding the claim that took place**  
13 **outside the presence of counsel?**

14 A. No.

15 **Q. And the same question with**  
16 **regard to Mr. Wright, just to be sure.**

17 A. Same answer.

18 **Q. Same answer. Thank you.**  
19 **Does Mt. Hawley consider USI to be an**  
20 **agent on behalf of my client -- an**  
21 **insurance agent?**

22 A. Yes.

23 **Q. Okay. Does Mt. Hawley**  
24 **consider Bass to be an agent on behalf of**  
25 **Mt. Hawley?**

96

1 **remember that testimony?**

2 A. I don't think that's  
3 accurate. I think Bass relied on that  
4 application even though it's not a  
5 Mt. Hawley application, but otherwise,  
6 correct.

7 **Q. But Mt. Hawley would have**  
8 **relied on Bass' reliance on that**  
9 **application, correct?**

10 A. Yes.

11 **Q. And would have expected Bass**  
12 **to follow the underwriting guidelines,**  
13 **correct?**

14 A. Yes.

15 **Q. And not deviate from them at**  
16 **all, right?**

17 A. They would not be expected  
18 to deviate from the underwriting  
19 guidelines, correct.

20 **Q. How important is it for an**  
21 **insured to fill out the application for**  
22 **insurance correctly? How important is**  
23 **that?**

24 A. It's critically important.

25 **Q. Okay. Yet the application**

95

1 A. That's a legal conclusion  
2 that I can't really speak to, but we do  
3 give Bass the power to issue Mt. Hawley  
4 policies on Mt. Hawley paper within the  
5 underwriting guidelines.

6 **Q. Well, in fairness, the**  
7 **previous question I asked you if USI was**  
8 **considered an agent. The same question**  
9 **with two different people, you answered**  
10 **the first and you claim the second one is**  
11 **a legal conclusion. So I'm just asking a**  
12 **simple question. If Bass is treated as**  
13 **an agent from Mt. Hawley -- you said that**  
14 **USI was an agent for my client.**

15 A. Okay. That would also be a  
16 legal conclusion, but to the best of my  
17 knowledge, the answer to both is yes.

18 **Q. You testified also earlier**  
19 **that Mt. Hawley -- and this goes to the**  
20 **issue of how Bass has to strictly follow**  
21 **these underwriting guidelines, sir. You**  
22 **testified earlier that Mt. Hawley relied**  
23 **upon the underwriting application even**  
24 **though it's not their own standard**  
25 **underwriting application. Do you**

97

1 **that was used wasn't a Mt. Hawley**  
2 **application, correct?**

3 A. Correct. This is a common  
4 happening in the insurance industry where  
5 applicants for coverage may use a form  
6 that happened to come from a different  
7 insurer.

8 **Q. And the insurer in this case**  
9 **was RSUI?**

10 A. That's what it says there on  
11 the top, yes.

12 **Q. Do you know what that**  
13 **acronym stands for?**

14 A. I don't.

15 **Q. Okay. So Mt. Hawley relied**  
16 **on an application for an insurance**  
17 **company they're not aware of; that's your**  
18 **testimony?**

19 MR. DELAHUNT: Objection.  
20 BY THE WITNESS:

21 A. No, that's not my testimony.

22 **Q. Okay. Well, Bass relied on**  
23 **the application?**

24 MR. DELAHUNT: Objection.  
25 BY MR. PIERANTONI:



98

1 **Q. It's not a Mt. Hawley**  
2 **application, correct?**

3 A. I took issue with the part  
4 of the question where you suggested that  
5 Mt. Hawley didn't know what RSUI was. I  
6 just don't know what the acronym stands  
7 for.

8 **Q. Okay. If I asked it another**  
9 **way, what does RSUI stand for, are you**  
10 **able to answer it that way?**

11 A. I know that they are another  
12 insurer. I just don't know what the  
13 letters RSUI stand for.

14 **Q. Okay. You had testified**  
15 **also that your understanding of the**  
16 **Mt. Hawley underwriting application**  
17 **that's similar to this one -- this**  
18 **supplemental one was worded differently**  
19 **with regard to short-term rentals. Do**  
20 **you recall that testimony?**

21 A. I testified that I have not  
22 reviewed that application, so I can't  
23 confirm that it is the same as the RSUI  
24 application.

25 **Q. Okay. But you did testify**

100

1 ask this question for counsel.  
2 Counsel, do you know if that  
3 application form was produced in  
4 response to discovery in this  
5 case, the Mt. Hawley underwriting  
6 application form?

7 MR. DELAHUNT: It was not  
8 produced.

9 MR. PIERANTONI: Okay. I  
10 want to make a request for that  
11 document to be produced, please,  
12 in response since it's reasonably  
13 calculated to lead to discovery of  
14 admissible evidence.

15 MR. DELAHUNT: I object to  
16 the commentary on what it may lead  
17 to. Of course, I'll consider the  
18 request for supplemental  
19 production. I would ask, just  
20 because I may forget, that you  
21 follow up sure in writing.

22 MR. PIERANTONI: Sure.

23 MR. DELAHUNT: Ray, it can  
24 be in an e-mail. You know, it can  
25 be a formal demand. I don't

99

1 -- and you can correct me if I'm wrong --  
2 that there were differences that you were  
3 aware of between the RSUI application and  
4 Mt. Hawley's? You just couldn't be  
5 specific about it?

6 A. I don't know what the  
7 differences are.

8 **Q. Wasn't your testimony**  
9 **earlier today, with regard to the RSUI**  
10 **application vis-a-vis the Mt. Hawley**  
11 **application, that you know that**  
12 **Mt. Hawley's underwriting application**  
13 **addresses short-term rentals, just not in**  
14 **the same way as RUSI's?**

15 A. Given how important that  
16 question -- that issue is to the  
17 underwriting process, I'm confident that  
18 a question designed to elicit that type  
19 of information is in Mt. Hawley's rental  
20 dwelling supplemental application. If  
21 you're going to ask me any specifics  
22 about the wording of that question, I  
23 can't answer it without seeing that  
24 application.

25 MR. PIERANTONI: Okay. I'll

101

1 particularly care. I just don't  
2 want to forget.

3 MR. PIERANTONI: I just want  
4 to have -- I think we should have  
5 a copy of that just so we can --  
6 Since the witness can't remember  
7 or recall or identify the  
8 distinctions between the two, I  
9 think it might be important in  
10 this case. That's all.

11 MR. DELAHUNT: We can  
12 disagree on that.

13 MR. PIERANTONI: I'm sorry?

14 MR. DELAHUNT: I don't --  
15 Ray, if you say it's important,  
16 then you're inviting me to explain  
17 why it's not important, and I  
18 don't want to do this during a  
19 deposition.

20 MR. PIERANTONI: Okay. No,  
21 we're not. I'm going to make the  
22 request.

23 MR. DELAHUNT: No -- but  
24 you're in front of a witness  
25 stating that it's an important

102

1 document.

2 MR. PIERANTONI: It's not my  
3 witness. It's your witness.

4 MR. DELAHUNT: This is a  
5 deposition.

6 MR. PIERANTONI: All right.  
7 I'm just clarifying. Your witness  
8 doesn't know what that  
9 underwriting application states,  
10 right?

11 MR. DELAHUNT: You already  
12 asked him.

13 MR. PIERANTONI: He's  
14 testified he doesn't know what it  
15 states, and I'm just saying I need  
16 it produced.

17 MR. DELAHUNT: Again, my  
18 client --

19 MR. PIERANTONI: If you want  
20 to fight me over it, what he can  
21 testify to, then I'll move on.

22 BY MR. PIERANTONI:

23 **Q. Let's see. Are you aware of**  
24 **any communication between Mt. Hawley and**  
25 **Bass after the date of this application,**

104

1 question for me to answer.

2 **Q. Well, I'm just referring to**  
3 **the underwriting guidelines that were**  
4 **discussed earlier.**

5 MR. PIERANTONI: Luke, I  
6 hate to bother you, but if you  
7 could bring up that section of the  
8 underwriting guidelines where they  
9 make the distinction between the  
10 two.

11 MR. KATZENMEIER: Yeah. So  
12 short-term rentals is up here at  
13 the top and the --

14 MR. PIERANTONI: Yeah --

15 MR. KATZENMEIER: -- at the  
16 bottom.

17 MR. PIERANTONI: Yeah. It's  
18 a few pages later. It's the one  
19 where -- there you go.

20 BY MR. PIERANTONI:

21 **Q. So you see at the top, the**  
22 **top section says "submit," right? That's**  
23 **with regard to the referral process,**  
24 **right, that Bass would undergo?**

25 A. That's an inexhaustive list

103

1 **which is, I believe, September 2nd, 2020?**  
2 **Are you aware of any communications**  
3 **between Bass and Mt. Hawley regarding the**  
4 **differences between Mt. Hawley's**  
5 **underwriting application and this RSUI**  
6 **application form?**

7 A. I'm aware of no such  
8 communications.

9 **Q. What's the purpose for the**  
10 **Underwriting Department to know whether a**  
11 **short-term rental is an Airbnb, Vrbo,**  
12 **versus some other short-term rental?**

13 A. Because Airbnb, Vrbo, and  
14 similar services make a risk ineligible  
15 for a Mt. Hawley policy under the GBA  
16 program.

17 **Q. Okay, but short-term rentals**  
18 **are not ineligible, correct?**

19 A. It depends on the facts and  
20 circumstances surrounding that particular  
21 short-term rental.

22 **Q. Okay, but were you able to**  
23 **identify short-term rentals that would be**  
24 **potentially covered?**

25 A. That's too general of a

105

1 of that, but correct.

2 **Q. Right. And under that**  
3 **referral or submission process,**  
4 **short-term or vacation rentals is listed,**  
5 **right?**

6 A. Yes.

7 **Q. So it's not automatically**  
8 **deemed ineligible at that point, correct?**

9 A. Correct.

10 **Q. Okay. The only thing that's**  
11 **listed as ineligible are Airbnb, Vrbo,**  
12 **and similar online rental operations,**  
13 **correct?**

14 A. Yes.

15 **Q. Okay. But as you sit here**  
16 **now, you can't testify as to the**  
17 **difference between short-term or vacation**  
18 **rentals and Airbnb, Vrbo, and similar**  
19 **online rental operations?**

20 MR. DELAHUNT: Objection.

21 BY THE WITNESS:

22 A. If coverage is going to be  
23 issued for a short-term or vacation  
24 rental, it would be reviewed by the  
25 Mt. Hawley underwriter depending on the

106

1 facts and circumstances, but in no  
2 situation would the policy be issued if  
3 it was Airbnb, Vrbo, or similar online  
4 rental operation.

5 **Q. So is it fair to say that**  
6 **what you're saying is that Airbnb, Vrbo**  
7 **are sort of subsections or subheadings**  
8 **under short-term or vacation rentals; and**  
9 **if a short-term or vacation rental were**  
10 **submitted and it came up Vrbo, no**  
11 **coverage?**

12 A. Correct. We would not issue  
13 a policy in that situation.

14 **Q. And the same thing with**  
15 **Airbnb, right?**

16 A. Yes. Airbnb, Vrbo, and  
17 similar online rental operations.

18 **Q. Right. So similar online**  
19 **rental operations means anybody that's on**  
20 **the Internet that does that, that rents**  
21 **out these properties, correct? Is that**  
22 **what you mean? Is that what Mt. Hawley**  
23 **means?**

24 A. I think that language on the  
25 form that's on the screen speaks for

108

1 referring to about rentals by the day or  
2 by the week.

3 **Q. Or references to the monthly**  
4 **average rent, correct?**

5 A. I don't believe that  
6 question is relevant to any of these  
7 issues.

8 **Q. Is it not -- Not to beat a**  
9 **dead horse, but given that's what you**  
10 **just stated, I'm just going to follow up**  
11 **on that.**

12 **You will concede that the**  
13 **underwriting guidelines define short-term**  
14 **rentals as anything less than 12 months,**  
15 **correct?**

16 A. Yes.

17 **Q. I believe you testified that**  
18 **it was as early as, I believe,**  
19 **August 2022 that Mr. Hoffman was aware of**  
20 **the short-term rental. It was after a**  
21 **conversation with someone at -- was it**  
22 **Bass or USI? Can you just clarify that?**

23 A. The claim notes in e-mail  
24 correspondence between Mr. Hoffman and  
25 the insured make that clear, but, yes, I

107

1 itself, but it refers to Airbnb, Vrbo,  
2 and similar online rental operations.

3 **Q. Okay. Is there any of this**  
4 **-- any explanation of the distinction**  
5 **between short-term or vacation rentals**  
6 **and this subcategory of these other**  
7 **rentals? Is there anything like that in**  
8 **the underwriting application that my**  
9 **client would have seen to understand that**  
10 **distinction?**

11 A. This document is not part of  
12 the underwriting application. These are  
13 part of the guidelines that Bass must  
14 follow in issuing policies for  
15 Mt. Hawley.

16 **Q. I take you at your word, but**  
17 **what I'm asking you, though, is a**  
18 **different question. Is there anything in**  
19 **the underwriting application itself that**  
20 **points out to the insured that Mt. Hawley**  
21 **makes this distinction between short-term**  
22 **rentals -- between the various types of**  
23 **short-term rentals?**

24 A. In this particular case,  
25 only the question that we've been

109

1 believe that's the time frame.

2 **Q. Around August 2022?**

3 A. Yes.

4 **Q. Is there anyone else at**  
5 **either Bass or Mt. Hawley that would have**  
6 **known earlier in time about the**  
7 **short-term rental period?**

8 A. Not that I'm aware of.

9 MR. PIERANTONI: Okay.  
10 Luke, can you switch this back to  
11 me?

12 MR. KATZENMEIER: Yes.

13 MR. PIERANTONI: Thank you.

14 BY MR. PIERANTONI:

15 **Q. Okay. Mr. Brownell, are you**  
16 **able to see the document I placed in**  
17 **front of you? It's an e-mail.**

18 A. Yes.

19 **Q. Okay. And can you see my**  
20 **cursor moving around so I can direct your**  
21 **attention?**

22 A. Yes.

23 **Q. So I'll represent that this**  
24 **is a document from Mt. Hawley's**  
25 **production.**

110

1 MR. PIERANTONI: What's the  
2 next exhibit?

3 THE COURT REPORTER: It's I.  
4 (Nationwide Deposition Exhibit I  
5 marked for identification.)

6 BY MR. PIERANTONI:

7 **Q. And focusing here, this**  
8 **e-mail right here, and it goes over to**  
9 **the next page slightly with the signature**  
10 **block. Do you recognize the e-mail**  
11 **that's been marked as Exhibit I?**

12 A. Give me a second to read it.

13 **Q. Sure. Would you like me to**  
14 **make it bigger for you?**

15 A. No. I don't recall having  
16 seen this particular e-mail before.

17 **Q. Okay, but you would concede**  
18 **that this is from Mt. Hawley's own**  
19 **production, correct?**

20 A. I would defer to  
21 Mr. Delahunt.

22 MR. DELAHUNT: Is there a  
23 Bates stamp on it?

24 MR. PIERANTONI: Yes. At  
25 the bottom, it says MH1305.

112

1 **Q. Okay. Including the policy**  
2 **at issue here, right, sir?**

3 A. Yes.

4 **Q. Okay. And we had discussed**  
5 **earlier USI's role and Bass' role. And**  
6 **there's an exchange between Gray Collier**  
7 **at Bass with Tiffany Middleton at USI**  
8 **with regard to this matter?**

9 A. On one occasion, yes.

10 **Q. Was counsel present at the**  
11 **time?**

12 A. Yes.

13 **Q. Which counsel?**

14 A. Mr. Delahunt and  
15 Ms. Kanellakes.

16 **Q. At all times? There was no**  
17 **other discussion with him?**

18 A. Correct. I've never spoken  
19 to him outside of that conversation with  
20 those people present.

21 **Q. Can you just read the --**  
22 **let's see -- fourth sentence that begins**  
23 **with: Can you tell me information?**

24 **Can you read that sentence**  
25 **out loud that's written by Ms. Middleton**

111

1 BY MR. PIERANTONI:

2 **Q. All right. So we're on the**  
3 **same page on that. Okay. What do you**  
4 **recognize the e-mail to be, sir?**

5 A. This appears to be an e-mail  
6 exchange having to do with requesting a  
7 policy or a renewal. It's not quite  
8 clear from the face of it.

9 **Q. Sure. You see that -- I'm**  
10 **going to highlight this right here.**  
11 **That's the wrong policy. Do you see this**  
12 **one here, GGL0026067 in the reference**  
13 **line?**

14 A. Yes.

15 **Q. Is that the same as the**  
16 **policy number at issue in this case?**

17 A. I believe it is.

18 **Q. Okay. So, again, does this**  
19 **help clarify what this e-mail is**  
20 **concerning?**

21 A. To be entirely sure, I would  
22 have to see the broader context, but it  
23 appears to be e-mail exchanges during the  
24 process of seeking a renewal of a number  
25 of policies, actually.

113

1 **to Gray Collier?**

2 A. Sure. It says: Can you  
3 tell me information I would need to  
4 provide her with a quote for a property  
5 short-term rentals? I assume much like  
6 they have. Total construction costs are  
7 estimated to \$1,032,500.

8 **Q. Okay. Do you know who the**  
9 **"she" is that's being referred to?**

10 A. No.

11 **Q. Is it fair to say -- would**  
12 **you be surprised to say the "she" is the**  
13 **representative from the insured asking**  
14 **the question about coverage?**

15 A. That's possible.

16 **Q. Okay. And Mr. Collier is**  
17 **being informed about the property being a**  
18 **short-term rental in this e-mail,**  
19 **correct? At least the property -- I take**  
20 **that back.**

21 **That the property listed --**  
22 **at least the properties with regard to**  
23 **the insurance policies listed in the**  
24 **subject line are subject to short-term**  
25 **rentals, correct?**

114

1 A. Actually, the e-mail refers  
2 to a quote for a property, short-term  
3 rentals. And the e-mail body itself  
4 doesn't specify which property that  
5 that's referring to.

6 **Q. Right. But the subject line**  
7 **does refer to the policy at issue in this**  
8 **case, right?**

9 A. No. The subject line has RE  
10 colon in front of it, so, apparently, the  
11 same subject line has been used in  
12 multiple replies back and forth.

13 **Q. Okay. That was never**  
14 **changed, was it?**

15 A. No.

16 **Q. Okay. Would this change**  
17 **your testimony as to when Mt. Hawley was**  
18 **aware, whether on its own or through**  
19 **Bass, of the short-term rentals?**

20 MR. DELAHUNT: Objection.  
21 BY THE WITNESS:

22 A. The discussion we've had  
23 previously about Mt. Hawley being aware  
24 was in reference to when Mt. Hawley was  
25 aware that it was a Vrbo or Airbnb or

116

1 **Bass informing Mt. Hawley of the**  
2 **possibility of there being short-term**  
3 **rentals for property covered under that**  
4 **policy, under the policy at issue?**

5 MR. DELAHUNT: Objection.  
6 BY THE WITNESS:

7 A. I can't say that that  
8 e-mail's reference to short-term rentals  
9 refers to the properties at issue in the  
10 underlying suit.

11 **Q. Okay. But we established**  
12 **that the subject line, even though it's**  
13 **been followed up from maybe previous**  
14 **e-mails, still contains the policy number**  
15 **in it, correct?**

16 A. Yes, but that doesn't  
17 logically mean that the reference to  
18 short-term rentals in the body of that  
19 e-mail is referring to the property that  
20 was the subject of GGL0026060.

21 **Q. Right. It doesn't mean, but**  
22 **it could mean, correct?**

23 MR. DELAHUNT: Objection.  
24 BY THE WITNESS:

25 A. That would be speculation.

115

1 similar property. That's a different  
2 issue than it being a short-term rental.

3 **Q. Okay. Your testimony today**  
4 **was that -- I mean, clearly it's**  
5 **important because you're making a claim**  
6 **to disclaim coverage. If Mt. Hawley**  
7 **learned of the possibility of the**  
8 **property being a short-term rental, it**  
9 **would either have to be deemed ineligible**  
10 **for coverage or referred, right? That**  
11 **was your testimony today, that Bass would**  
12 **have to refer -- I'll rephrase the**  
13 **question.**

14 Bass would have to refer any  
15 short-term rental to Mt. Hawley under the  
16 underwriting guidelines, correct?

17 A. That's what they're supposed  
18 to do, correct.

19 **Q. Those guidelines are**  
20 **supposed to be strictly followed,**  
21 **correct?**

22 A. They're supposed to be.

23 **Q. Right. What I'm asking you**  
24 **now is: On February 2nd, 2022, which is**  
25 **the date of this e-mail, are you aware of**

117

1 **Q. So it's not one thing to**  
2 **speculate that it doesn't mean, but it's**  
3 **not something to speculate that it could**  
4 **mean?**

5 MR. DELAHUNT: Objection.  
6 BY THE WITNESS:

7 A. I didn't say it doesn't  
8 mean. I said I can't make that  
9 connection based on what's here in this  
10 e-mail.

11 **Q. So it's possible that it**  
12 **does refer to the property that's the**  
13 **subject of this claim, right?**

14 A. It's possible, but I would  
15 say unlikely.

16 **Q. Why would you say that?**

17 A. Because if it were, then  
18 Bass would have referred that in to us.

19 **Q. I see. So it's impossible**  
20 **for Bass to have ever made a mistake?**

21 MR. DELAHUNT: Objection.  
22 BY THE WITNESS:

23 A. Impossible, no. We're all  
24 human beings.

25 **Q. Okay. With regard to -- I**



118

1 mean, with regard to the importance  
2 that's attached to the short-term  
3 rentals, given it's the major issue here  
4 in this case, that it was a Vrbo or  
5 Airbnb as a subset and that coverage is  
6 ineligible for that, but it may be  
7 eligible for a different type of  
8 short-term rental, right, where is there  
9 -- are you aware -- Let me rephrase it.

10 Are you aware of any efforts  
11 by Mr. Collier or Mt. Hawley to look  
12 further into the possibility that this  
13 short-term rental may have been an Airbnb  
14 or Vrbo?

15 A. I don't even know if  
16 Mr. Collier knew that the property at  
17 issue was a short-term rental.

18 Q. Right. But he clearly was  
19 aware of short-term rentals at, possibly,  
20 the property that's at issue in this case  
21 on February 2nd, 2022, correct?

22 MR. DELAHUNT: Objection.  
23 BY THE WITNESS:

24 A. It's also possible that this  
25 reference to short-term rentals in this

120

1 A. Lots of things are possible.  
2 It is possible, but I would say unlikely.

3 Q. Okay. Given that it is  
4 possible, okay, would it be -- would Gray  
5 Collier or anybody at Bass or anybody at  
6 Mt. Hawley be concerned and look into  
7 that situation further if they had a red  
8 flag on a short-term rental?

9 MR. DELAHUNT: Objection.  
10 BY THE WITNESS:

11 A. Only if coverage were  
12 actually pursued for whatever short-term  
13 rental this e-mail refers to.

14 Q. Okay. And if it wasn't  
15 pursued, then somebody dropped the ball,  
16 correct?

17 MR. DELAHUNT: Objection.  
18 BY THE WITNESS:

19 A. Or the insured decided not  
20 to pursue coverage for that particular  
21 property with Bass or with Mt. Hawley.

22 Q. Well, we know that  
23 short-term rental coverage was issued,  
24 right, because Mt. Hawley renewed the  
25 policy for the following year and

119

1 e-mail on the screen refers to a  
2 completely different property for which  
3 coverage was never issued.

4 Q. Could be. That's right.

5 MR. DELAHUNT: You're  
6 testifying in these questions, and  
7 I'm going to start doing likewise.  
8 Okay? Please.

9 MR. PIERANTONI: I'm going  
10 to ask you to stop coaching the  
11 witness and let me ask my  
12 questions.

13 MR. DELAHUNT: I didn't  
14 coach the witness, Ray. You're  
15 testifying in your questions.

16 MR. PIERANTONI: I'm not  
17 testifying. I'm asking for  
18 clarity. That's all I'm doing.

19 BY MR. PIERANTONI:

20 Q. So, Mr. Brownell, you would  
21 concede that it's possible that the  
22 subject property at issue in this  
23 litigation is the property that's  
24 referenced here in this e-mail? Is it  
25 possible?

121

1 accepted the premium payment when they  
2 already knew that there were short-term  
3 rentals occurring at the property, right?

4 MR. DELAHUNT: Objection.  
5 BY THE WITNESS:

6 A. I'm not sure where you're  
7 getting the basis for that question.

8 Q. What I'm saying is that we  
9 know that Mt. Hawley renewed the 2022 to  
10 2023 policy knowing already there were  
11 short-term rentals at the property in  
12 question in this litigation?

13 MR. DELAHUNT: Objection.  
14 BY THE WITNESS:

15 A. I have not reviewed the  
16 underwriting file for the '22, '23  
17 policy.

18 Q. Well, wasn't that one of the  
19 topics that you're here to testify about?  
20 I think it was Topic 1 or 2. Do you want  
21 to go over that again?

22 MR. DELAHUNT: Yeah, we can.  
23 BY MR. PIERANTONI:

24 Q. Yeah. Okay. Do you see  
25 topic No. 2, sir?



122

1 A. There's no reference to the  
2 '22, '23 policy in that No. 2.

3 **Q. I wasn't asking about that.**  
4 **I was just asking -- you mentioned**  
5 **underwriting, that you're not here to**  
6 **talk about the underwriting guidelines --**  
7 **or the underwriting process for the**  
8 **renewal policy, right?**

9 MR. DELAHUNT: Objection.  
10 He said he did not read the 2022  
11 underwriting file.

12 MR. PIERANTONI: Okay.

13 MR. DELAHUNT: Ray, if you  
14 don't mind, find the definition of  
15 the Mt. Hawley policy in the  
16 notice.

17 MR. PIERANTONI: Just give  
18 me a second.

19 BY MR. PIERANTONI:

20 **Q. Do you see Topic No. 7?**

21 A. Yes.

22 **Q. Any incorrect, false,**  
23 **inaccurate, or incomplete information**  
24 **contained in any application for**  
25 **insurance provided by Beach Cruiser to**

124

1 considered for the renewal.

2 **Q. Right. So even though this**  
3 **topic says you're here to testify, at**  
4 **least reasonably prepared to testify with**  
5 **regard to applications for insurance,**  
6 **you're not here to testify as to the**  
7 **application for insurance under renewal?**

8 A. I'm here to discuss any  
9 incorrect, false, inaccurate, or  
10 incomplete information contained in any  
11 application. And the incorrect, false,  
12 inaccurate, or incomplete information I  
13 have knowledge of and I'm testifying  
14 about is the supplemental application  
15 dated September of 2020.

16 **Q. Okay. Are you aware of any**  
17 **incorrect, false, inaccurate, or**  
18 **incomplete information with regard to the**  
19 **renewal?**

20 A. Which renewal?

21 **Q. The 2022 to 2023 renewal of**  
22 **the policy.**

23 A. I can't answer that question  
24 because I haven't reviewed the  
25 underwriting file for that policy.

123

1 **Mt. Hawley or to any other entity on**  
2 **behalf of Mt. Hawley. Do you understand**  
3 **that subject?**

4 A. Yes.

5 **Q. Okay. So what I'm asking**  
6 **you is: When the renewal came up for the**  
7 **policy at issue in this case, was there**  
8 **an acceptance of the premium payment for**  
9 **that renewal?**

10 A. As I said, I have not  
11 reviewed the underwriting file for that  
12 particular renewal, but it's my  
13 understanding that yes.

14 **Q. Okay. And the renewal was**  
15 **accepted and put into place and the new**  
16 **policy was issued for the 2022, 2023**  
17 **period after Mt. Hawley was made aware of**  
18 **the short-term rentals taking place at**  
19 **the property that's the subject of the**  
20 **same policy, correct?**

21 A. Except I don't know what  
22 supplemental or different applications or  
23 information are part of that second  
24 renewal's underwriting file, so I can't  
25 comment on what information was or wasn't

125

1 **Q. Right. Even though the**  
2 **question clearly asks for a witness to be**  
3 **reasonably informed to testify about**  
4 **that, correct?**

5 MR. DELAHUNT: Objection.  
6 BY THE WITNESS:

7 A. I don't think you're reading  
8 No. 7 the right way.

9 **Q. We differ then. Let me just**  
10 **see here.**

11 MR. PIERANTONI: You wanted  
12 to look, Tim, at the definition of  
13 a policy?

14 MR. DELAHUNT: Yeah.

15 MR. PIERANTONI: Okay. It  
16 says the '21 to '22 policy. I  
17 don't dispute that, but that's not  
18 my question.

19 BY MR. PIERANTONI:

20 **Q. Is the renewal process for**  
21 **this Mt. Hawley policy, for the 2022 to**  
22 **2023 renewal, is that renewal process**  
23 **considered part of the underwriting**  
24 **process?**

25 A. Yes.

126

1 **Q. Okay. And topic 2 says:**  
 2 **Mt. Hawley's underwriting guidelines**  
 3 **applicable to the Mt. Hawley policy,**  
 4 **including any guideline for issuance of a**  
 5 **policy for the owner of a policy used for**  
 6 **short-term rentals.**

7 **Do you see that, sir?**

8 A. Yes.

9 **Q. You're not able to testify**  
 10 **as to the underwriting process for the**  
 11 **renewal; is that correct?**

12 MR. DELAHUNT: Objection.

13 MR. PIERANTONI: Maybe it's  
 14 a twitch, but I am a little  
 15 concerned about the witness  
 16 looking over to you before he  
 17 gives an answer.

18 THE WITNESS: Because I have  
 19 to know when he's done with his  
 20 objection before I can speak.

21 MR. PIERANTONI: Fair  
 22 enough. Thank you. I just wanted  
 23 to make sure because it won't look  
 24 good on the video. That's why.  
 25 Thank you for clarifying.

128

1 **but it was with regard to requesting that**  
 2 **Mt. Hawley withdraw its statutory**  
 3 **recision claim. And in the course of the**  
 4 **earlier testimony today, I discovered**  
 5 **that these three documents were not**  
 6 **produced even though the parties -- at**  
 7 **least counsel was aware, so I just wanted**  
 8 **to show you because I wanted to pinpoint**  
 9 **the date that the premium was paid. Just**  
 10 **give me a second here.**

11 **Okay, sir. Is this big**  
 12 **enough for you to see?**

13 A. Yes.

14 (Nationwide Deposition Exhibit J  
 15 marked for identification.)

16 BY MR. PIERANTONI:

17 **Q. All right. Can you identify**  
 18 **the document marked as Exhibit J? By the**  
 19 **way -- I'm sorry. Before we do that, I'm**  
 20 **going to enter Exhibit I that was marked**  
 21 **before. So if we could mark this as**  
 22 **Exhibit J.**

23 **Can you look at the document**  
 24 **and then explain to me what that document**  
 25 **is?**

127

1 BY MR. PIERANTONI:

2 **Q. So you're not here to**  
 3 **testify as to the underwriting process**  
 4 **for the renewal, correct?**

5 A. The processes for the  
 6 renewal are the same from policy to  
 7 policy. Specifically how the second  
 8 renewal was underwritten or what  
 9 information was provided or considered,  
 10 no, I have not reviewed that underwriting  
 11 file.

12 MR. PIERANTONI: Okay. I'm  
 13 finishing up here soon.

14 Luke, are you still going to  
 15 ask that question or do you want  
 16 me to ask the question?

17 MR. KATZENMEIER: You can  
 18 ask that question if you want.  
 19 I've got a couple more once you're  
 20 done.

21 BY MR. PIERANTONI:

22 **Q. Just to be clear, I produced**  
 23 **documents during our last break to**  
 24 **counsel. They were documents that were**  
 25 **shared with regard to the back-and-forth,**

129

1 A. I haven't seen this document  
 2 before, so the document just has to refer  
 3 to itself.

4 **Q. Okay. Have you ever seen a**  
 5 **document like this?**

6 A. I'm not sure what you mean.

7 **Q. Well, what is the document**  
 8 **to you? I'm not asking you to -- Just**  
 9 **what is the document to you?**

10 A. Generally, it appears to be  
 11 some kind of invoice.

12 **Q. Okay. And the invoice is**  
 13 **from who?**

14 A. It's on Bass Underwriters'  
 15 letterhead.

16 **Q. Okay. And it's issued to**  
 17 **which insured?**

18 A. Beach Cruiser, LLC, 40 Ounce  
 19 Highway, LLC.

20 **Q. Okay. Do you see the**  
 21 **invoice date?**

22 A. Yes. It looks like  
 23 September 8, 2022.

24 **Q. Okay. And the renewal**  
 25 **policy number is GGL0031463. Do you see**

130

1 that?

2 A. Yes.

3 Q. Okay. The next page --  
4 let's see if I can get to the next page.  
5 The next page is a receipt for payment of  
6 the invoice that was referred to earlier.  
7 Would you dispute that?

8 A. That's what it appears to  
9 be.

10 Q. Okay. So if I can have this  
11 entered as Exhibit I.

12 Do you have any reason to  
13 doubt this is the invoice for the policy  
14 renewal for the 2022, 2023 period?

15 A. As I've never seen this  
16 before, no.

17 Q. Okay. So the date upon  
18 which the invoice was remitted and paid  
19 was on or about September 8th, 2022. I  
20 think the actual payment date was  
21 September 28th, as reflected here. Do  
22 you see that?

23 A. Yes, that's what those  
24 documents said.

25 Q. And, by that time,

132

1 DJ action?

2 MR. DELAHUNT: Objection.  
3 BY THE WITNESS:

4 A. That's a legal issue within  
5 the confines of the declaratory judgment  
6 action, and I would defer to outside  
7 coverage counsel, who is experienced in  
8 New York law.

9 Q. Okay. So you're not aware  
10 of that. I'm just asking if you're  
11 aware.

12 A. I'm not aware one way or the  
13 other.

14 Q. Okay. Do you know what that  
15 means, what I just said?

16 A. Yes.

17 MR. PIERANTONI: Okay.

18 Thank you. I don't think -- I'm  
19 just going to reserve maybe a  
20 couple questions at the end  
21 depending on what happens, but it  
22 won't be long. Luke, if you want  
23 to go ahead and step in.

24 MR. KATZENMEIER: Yeah. I  
25 just have a few more.

131

1 Mt. Hawley was already aware of the  
2 short-term rental situation at the  
3 property that's the subject of this  
4 litigation, correct?

5 A. Yes.

6 Q. Okay. Give me a second.

7 A. I don't know what the terms  
8 of that renewal policy are. I would have  
9 to look at the policy.

10 Q. Okay. Sir, are you aware --  
11 The position taken by Mt. Hawley is that  
12 New York law applies to this matter. We  
13 had that discussion earlier. You  
14 testified to that earlier, correct?

15 A. Yeah. I would defer to the  
16 language of the service of suit  
17 endorsement that we spoke about earlier,  
18 but yes.

19 Q. Are you aware of the law in  
20 New York stating that a declaratory  
21 judgment action filed by an insurer  
22 should -- should there be a decision that  
23 coverage is in fact in place, that  
24 defense costs would also include the  
25 costs of my client defending against the

133

1 REDIRECT EXAMINATION  
2 BY MR. KATZENMEIER:

3 Q. Mr. Brownell, we talked  
4 about the underwriting guidelines earlier  
5 and correct me if I'm wrong, but you said  
6 it was, more or less, standard that  
7 properties listed on Airbnb, Vrbo, et  
8 cetera were considered ineligible risks  
9 in these types of policies?

10 A. I think you're referring to  
11 the testimony where I was talking about  
12 the industry in general?

13 Q. Yes, with respect to this  
14 question.

15 A. It is my general  
16 understanding that most insurers would  
17 not have an appetite to insure risks that  
18 are Airbnb, Vrbo, or similar properties.

19 Q. Okay. And, certainly, you  
20 would agree that on the underwriting  
21 guidelines we looked at earlier -- I can  
22 pull them up if needed -- that Airbnb,  
23 Vrbo, and similar rental options are  
24 listed as ineligible risks; is that  
25 correct?

134

1 A. Yes.

2 **Q. Have those underwriting**  
3 **guidelines -- as far as you're aware,**  
4 **have they been updated within the past**  
5 **two years, say?**

6 A. Not the provisions related  
7 to the Vrbo, no.

8 **Q. So even if there was an**  
9 **updated version of the underwriting**  
10 **guidelines, the ineligible risk section**  
11 **would still display that Airbnb, Vrbo, or**  
12 **similar rental options are ineligible**  
13 **risks?**

14 A. Yes. Airbnb, Vrbo, and  
15 similar operations have been ineligible  
16 since this product began and continue to  
17 be so through the present day.

18 **Q. And, presumably, that would**  
19 **be the case at the same time the 2022 to**  
20 **2023 renewal was issued, correct?**

21 A. Yes.

22 MR. KATZENMEIER: Okay.  
23 Ray, if you could pull up  
24 Exhibit I for me again. I believe  
25 it was the communications between

136

1 A. Yes, the one with the GGL  
2 prefix.

3 **Q. Okay. Are either -- or any**  
4 **of the other policies policies issued by**  
5 **Mt. Hawley to Beach Cruiser?**

6 A. I don't think so. I don't  
7 recognize the format of those policy  
8 numbers.

9 **Q. Okay. And aside from that**  
10 **GGL policy number, are you aware of any**  
11 **other policies issued by Mt. Hawley to**  
12 **Beach Cruiser?**

13 A. No, other than the previous  
14 year's policy and the subsequent year's  
15 policy.

16 **Q. Sure. Is it possible that**  
17 **Mt. Hawley has issued insurance policies**  
18 **to Beach Cruiser for a different**  
19 **property, for example?**

20 A. I suppose it could be  
21 possible, but I have no information that  
22 that was ever done.

23 **Q. Okay. If Mt. Hawley had**  
24 **issued other policies to Beach Cruiser**  
25 **for a different property, for example,**

135

1 Bass Underwriters and USI.

2 MR. PIERANTONI: Sorry. It  
3 helps to unmute yourself. What's  
4 the document again, Luke?

5 MR. KATZENMEIER: Exhibit I.  
6 It should be the February 2022  
7 correspondence between Bass and  
8 USI. I have a copy as well. I  
9 just wanted to make sure the copy  
10 we're using is consistent.

11 MR. PIERANTONI: Give me a  
12 second here. I have to sort of  
13 move it a little. Sorry about the  
14 movement on the screen, gentlemen.  
15 BY MR. KATZENMEIER:

16 **Q. It's this right here. And I**  
17 **want to scroll in particular to these**  
18 **policy numbers that are in the subject**  
19 **line. Can you see those?**

20 A. Yes.

21 **Q. Can you read any of those?**

22 A. I can read all of them.

23 **Q. Okay. Do you recognize any**  
24 **of those policy numbers as policies**  
25 **issued by Mt. Hawley to Beach Cruiser?**

137

1 **would discovering that the property**  
2 **insured under this policy was listed on**  
3 **Airbnb, Vrbo have prompted Mt. Hawley to**  
4 **check in on the other properties or**  
5 **verify whether they were being used on**  
6 **Airbnb or Vrbo?**

7 MR. DELAHUNT: Objection to  
8 form.

9 BY THE WITNESS:

10 A. I don't think so.

11 **Q. You don't think so? Why**  
12 **would Mt. Hawley not have checked on the**  
13 **usage of other properties?**

14 MR. DELAHUNT: Objection.  
15 BY THE WITNESS:

16 A. They would have -- the  
17 underwriters would have relied on the  
18 application information submitted in  
19 connection with the request for insurance  
20 for those properties.

21 **Q. And that's the case even**  
22 **after the application in this would have**  
23 **been, in that scenario, demonstratively**  
24 **incorrect?**

25 MR. DELAHUNT: Objection.

138

1 BY THE WITNESS:

2 A. I'm not aware of a procedure  
3 by which other hypothetical properties  
4 for which an insured is seeking coverage  
5 would be investigated in a different way  
6 because of an issue with another policy,  
7 if that's what you're asking.

8 MR. KATZENMEIER: Okay. Let  
9 me see if I have anything else. I  
10 think that's all I have for you.

11 Do you have anything else, Ray?

12 MR. PIERANTONI: I just have  
13 a couple of quick follow-up  
14 questions specifically with regard  
15 to the endorsement, and then I'm  
16 done, okay?

17 Luke, would you mind  
18 bringing up the endorsement?

19 MR. KATZENMEIER: The  
20 amended conditions endorsement?

21 MR. PIERANTONI: Yeah. And  
22 thank you, Mr. Brownell. I know  
23 we're going through lunch here,  
24 but I promise it will be short.

25 THE WITNESS: It's only noon

140

1 And the two instances where  
2 I said the word "applications" the S is  
3 in parentheses.

4 **Q. Right. So is it fair to say**  
5 **that this part of the form sort of**  
6 **defines the term "application" as being**  
7 **not just the application at issue?**

8 A. Yes. It's including all  
9 other information provided by the insured  
10 in the application process.

11 **Q. Well, does it say -- Does it**  
12 **say it has to be provided by the insured,**  
13 **or does it just say submitted to**  
14 **Mt. Hawley generally?**

15 A. The latter.

16 **Q. Okay. And the documents**  
17 **that's referred to in that sentence could**  
18 **be e-mails, correct?**

19 A. It could.

20 MR. PIERANTONI: Okay.  
21 Thank you. I have no further  
22 questions. Thank you so much for  
23 your time. I appreciate it.  
24 Thank you, Tim.

25 MR. DELAHUNT: All right.

139

1 here.

2 MR. PIERANTONI: My stomach  
3 is churning right now.

4 RE CROSS-EXAMINATION

5 BY MR. PIERANTONI:

6 **Q. Great. Okay, Mr. Brownell.**  
7 **You recall your testimony earlier today**  
8 **about this endorsement?**

9 A. Generally, yes.

10 **Q. Okay. Let's focus on**  
11 **Section 4A, okay? And I'm going to ask**  
12 **you to read the last two sentences of**  
13 **that. Is that okay? Can you read it out**  
14 **loud for the record?**

15 A. Yes. For purposes of this  
16 endorsement, the application(s) includes,  
17 without limitation, any application forms  
18 and any other forms, documents, or  
19 information submitted to us in connection  
20 with or relating to issuance of this  
21 policy.

22 For purposes of this  
23 endorsement, the application(s) is a part  
24 of this policy and is incorporated  
25 herein.

141

1 Thanks, Ray and Luke. And I don't  
2 have any questions.

3 (Witness excused, 1:03.)

4 THE COURT REPORTER: You  
5 still want the transcript  
6 expedited for Monday, right?

7 MR. PIERANTONI: Yeah. I  
8 just need it Monday or Tuesday,  
9 would be helpful.

10 MR. KATZENMEIER: I believe  
11 we should do the same, yeah.

12 THE COURT REPORTER: Tim, do  
13 you want a copy?

14 MR. DELAHUNT: I think I'm  
15 entitled to it. It's my witness.

16 MR. PIERANTONI: We're  
17 talking about if you want it  
18 expedited, Tim.

19 MR. DELAHUNT: I already  
20 lived through it. I don't need it  
21 expedited.

22 Listen, I don't want to pay  
23 for my witness' transcript. You  
24 are obligated to produce a copy.

25 MR. PIERANTONI: If you want



<p style="text-align: right;">142</p> <p>1 to expedite one and not the other,  2 and we'll split the costs for  3 that, I'm fine with that.  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">143</p> <p>1 UNITED STATES OF AMERICA )  2 SOUTHERN DISTRICT OF NEW YORK )  3 ) SS  4 STATE OF ILLINOIS )  5 COUNTY OF COOK )  6  7 I, Alyssa N. Kuipers,  8 Certified Shorthand Reporter, Registered  9 Professional Reporter, do hereby certify  10 that MT. HAWLEY INSURANCE COMPANY was  11 first duly sworn by me to testify to the  12 whole truth and that the above deposition  13 was reported stenographically via Zoom by  14 me and reduced to typewriting under my  15 personal direction.  16 I further certify that the  17 said deposition was taken at the time  18 specified and that the taking of said  19 deposition commenced on the 15th day of  20 December, 2023.  21 I further certify that I am  22 not a relative or employee or attorney or  23 counsel of any of the parties, nor a  24 relative or employee of such attorney or  25 counsel, nor financially interested  directly or indirectly in this action.</p>
<p style="text-align: right;">144</p> <p>1 Witness my official  2 signature on this 19th day of December  3 2023.  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p> <p style="text-align: center;">_____  ALYSSA N. KUIPERS, CSR, RPR</p> <p>CSR No. 084-004857</p>	

A			
<b>a.m</b> 1:24 <b>ability</b> 7:25 8:4 <b>able</b> 84:18,22 93:2,6 98:10 103:22 109:16 126:9 <b>Absolutely</b> 48:1 51:19 78:4 <b>accept</b> 29:18 49:15,18 <b>acceptance</b> 123:8 <b>accepted</b> 50:3 121:1 123:15 <b>accuracy</b> 38:22 <b>accurate</b> 96:3 <b>acknowledging</b> 90:10 <b>acquired</b> 60:16 <b>acronym</b> 97:13 98:6 <b>action</b> 9:25 14:14,19 15:8 16:6,12 17:1 19:12 21:3,7 68:19 70:17 70:19,25 71:12 72:17 73:5,23 74:4 74:6,15,24 75:7 131:21 132:1,6 143:24 <b>actual</b> 130:20 <b>address</b> 21:1,6 <b>addressed</b> 71:22 <b>addresses</b> 99:13 <b>adjust</b>	61:17 <b>administrative</b> 71:18 <b>administratively</b> 15:14,17 <b>admissible</b> 100:14 <b>advice</b> 71:16 <b>advise</b> 48:10 <b>advised</b> 63:13 <b>affect</b> 7:25 8:4 <b>afternoon</b> 56:17,18,23 <b>age</b> 10:11 <b>agent</b> 25:8,11 29:4,7 30:6 30:11 66:7 89:20 94:20,21,24 95:8,13 95:14 <b>ago</b> 33:22 <b>agree</b> 90:17 92:25 133:20 <b>agreed</b> 71:9 73:22 78:19 <b>ahead</b> 17:17,25 46:23 75:8 132:23 <b>Airbnb</b> 22:20 23:3,15,18 24:20 27:4 39:18 40:1,14 41:16 42:22 43:3,6,18 58:21 62:22,23 63:14 86:25 103:11,13 105:11,18 106:3,6 106:15,16 107:1 114:25 118:5,13 133:7,18,22 134:11 134:14 137:3,6 <b>Airbnb's</b>	63:9 <b>allegation</b> 85:16 <b>allegations</b> 21:2 85:10,10 <b>alleged</b> 19:13,16 22:13,19 <b>alleging</b> 20:2 <b>alphabet</b> 70:5 <b>alternatively</b> 48:12 <b>Alyssa</b> 1:21 7:18 143:5 144:8 <b>amenable</b> 6:18 <b>amended</b> 48:13 52:20 65:11,22 66:22 68:9,11 69:8 70:13 71:10 80:19 80:21 138:20 <b>AMERICA</b> 143:1 <b>Americas</b> 2:7 <b>and/or</b> 77:1 <b>answer</b> 5:13,14,21 6:6,13 24:5 27:20 36:12 40:19 43:19 45:21 46:5,23 47:10 50:19 55:23 60:1 64:9,16 65:17 66:5,8 67:2 77:25 86:6 87:23 88:22 89:8,19,22,25 91:7,10 94:17,18 95:17 98:10 99:23 104:1 124:23 126:17 <b>answered</b> 6:21 47:8 88:2 92:11 95:9 <b>answering</b>	5:12 90:9 <b>answers</b> 5:20 32:8 <b>anybody</b> 69:16 80:8,22 106:19 120:5,5 <b>anyway</b> 64:3 65:8 <b>apologize</b> 75:19 <b>apparently</b> 114:10 <b>appear</b> 78:20 <b>APPEARANCES</b> 2:1 <b>appearing</b> 77:4 <b>appears</b> 26:6,10 27:5 42:7,8 52:5 73:9,12 77:5,8 111:5,23 129:10 130:8 <b>appetite</b> 133:17 <b>applicable</b> 126:3 <b>applicants</b> 38:8 97:5 <b>application</b> 3:12 17:7,11,14,17 18:4,15,22 19:1,2,6 19:8,14 20:6,13,19 20:21 28:7,12,13,21 29:6,6,9,11,14,24 30:5 31:18,19,23 32:2,4,10 34:6,11 34:16,25 35:12,20 35:23,25 36:8 37:24 38:3,5,9,17,22 39:2 39:5,11,20,22,23 40:3,5,9,18 44:10 47:17 63:17 66:6,14 66:17,20 87:12,15 87:18,22 88:5,7,15 88:16,20 89:23 92:9

95:23,25 96:4,5,9 96:21,25 97:2,16,23 98:2,16,22,24 99:3 99:10,11,12,20,24 100:3,6 102:9,25 103:5,6 107:8,12,19 122:24 124:7,11,14 137:18,22 139:17 140:6,7,10 <b>application(s)</b> 139:16,23 <b>applications</b> 29:18 32:9 38:13 123:22 124:5 140:2 <b>applied</b> 55:9 <b>applies</b> 131:12 <b>appreciate</b> 140:23 <b>approximating</b> 5:24 <b>approximation</b> 5:22 <b>areas</b> 12:7 78:10 <b>argumentative</b> 91:8 <b>arising</b> 54:11 <b>aside</b> 28:14 31:4 66:13 136:9 <b>asked</b> 84:9 87:24 95:7 98:8 102:12 <b>asking</b> 6:5,6 15:19,21 71:16 74:20 78:5 81:15 92:16,22 93:2 95:11 107:17 113:13 115:23 119:17 122:3,4 123:5 129:8 132:10 138:7 <b>asks</b> 29:20 89:14 125:2	<b>aspect</b> 20:12 <b>aspects</b> 20:6 <b>assert</b> 48:12 <b>asserted</b> 14:18,23 15:5 21:3 53:1 55:17 <b>asserting</b> 22:14 <b>assigned</b> 22:24 <b>Assistant</b> 11:11,17 <b>assume</b> 6:7 39:10 49:17,21 50:15 61:2 73:4 90:8 113:5 <b>assumes</b> 28:20 <b>assuming</b> 30:2,3 34:13 <b>assumption</b> 92:9,17 <b>attached</b> 35:21 118:2 <b>attachment</b> 18:4 <b>attended</b> 94:5 <b>attention</b> 73:16 109:21 <b>attorney</b> 4:11 6:10,12,14 16:8 57:4 143:20,22 <b>attorney's</b> 70:16,23 <b>August</b> 11:8,9 13:1,2 27:10 62:20 108:19 109:2 <b>Augustine</b> 26:11,12 <b>authored</b> 62:15 <b>authority</b>	29:2 34:17 35:14 <b>authorized</b> 32:5 <b>automatically</b> 105:7 <b>available</b> 71:3 <b>Avenue</b> 2:7,13 <b>average</b> 89:16 90:1 108:4 <b>avoid</b> 5:9 <b>aware</b> 4:22 18:2 22:22 24:1 37:21 38:23 50:2 58:19 63:20,23 65:3 80:9,22 83:7,18,23 85:1,9,15,17,22,24 86:8 93:15 97:17 99:3 102:23 103:2,7 108:19 109:8 114:18,23,25 115:25 118:9,10,19 123:17 124:16 128:7 131:1,10,19 132:9,11,12 134:3 136:10 138:2 <hr/> <b>B</b> <hr/> <b>B</b> 3:10,13 10:9 27:23 28:2 <b>back</b> 10:7 19:9 20:10 22:10 28:6 37:6 46:20 57:9 63:4,16 71:6 82:12 109:10 113:20 114:12 <b>back-and-forth</b> 127:25 <b>background</b> 82:9 <b>ball</b> 87:6 120:15 <b>based</b>	48:13 53:2 65:10,22 66:19 92:9 117:9 <b>bases</b> 69:23 <b>basic</b> 19:1,8 20:18,20 28:13 <b>basis</b> 22:14 65:10 66:21 80:24 90:11,16 121:7 <b>Bass</b> 29:5 30:8,13,14,15 30:16,20,23 31:5,18 31:19,20 32:5,9 33:7,11 34:10,16,23 35:4,11,14 36:4,5,9 36:16,21 37:2,11,13 37:22 38:2,7,11,20 39:5,6 42:11 44:3 44:18 45:12,23 46:3 63:20,25 64:6,13,19 65:5 66:16 82:21 83:8,19,22 94:24 95:3,12,20 96:3,11 97:22 102:25 103:3 104:24 107:13 108:22 109:5 112:7 114:19 115:11,14 116:1 117:18,20 120:5,21 129:14 135:1,7 <b>Bass'</b> 96:8 112:5 <b>Bates</b> 110:23 <b>BB</b> 54:9 <b>Beach</b> 1:7 2:10 17:8 18:15 18:23 19:14 25:3,6 25:7 26:15 27:18 33:19 38:18 44:3,10 44:16 51:21 52:6 53:1 65:6 66:15 68:7 84:22 85:23
---	--	---	---

122:25 129:18 135:25 136:5,12,18 136:24 <b>beat</b> 108:8 <b>began</b> 31:13 134:16 <b>beginning</b> 12:22 <b>begins</b> 112:22 <b>behalf</b> 2:5,10,16 34:17 35:15 36:18 37:12 50:7 66:15 76:25 87:2,3 94:20,24 123:2 <b>beings</b> 117:24 <b>believe</b> 23:1,7 24:14 25:15 30:25 31:7 41:7 45:2,24 49:24,25 50:4 52:14 53:16,25 56:6 58:3 67:7,9 70:4 76:6,11 81:12 86:18 88:10 103:1 108:5,17,18 109:1 111:17 134:24 141:10 <b>best</b> 95:16 <b>beyond</b> 64:14 <b>big</b> 128:11 <b>bigger</b> 110:14 <b>binding</b> 29:2 <b>bit</b> 11:22 19:4 22:10 23:21 52:8 75:10 <b>blank</b> 20:25 <b>block</b>	110:10 <b>blue</b> 72:22,22 <b>body</b> 114:3 116:18 <b>bookmarked</b> 54:3 <b>bother</b> 104:6 <b>bottom</b> 42:2 77:10 104:16 110:25 <b>box</b> 66:9 <b>break</b> 6:16,20 61:7,22 127:23 <b>brief</b> 62:14 73:10 <b>briefly</b> 56:6 <b>bring</b> 88:4 93:25 104:7 <b>bringing</b> 138:18 <b>broader</b> 111:22 <b>Brownell</b> 4:10 7:23 10:9 13:19 16:20 17:20 18:9 22:1,3 25:17 26:2 28:1 32:18,23 47:19 51:10,11 58:14 62:1 67:16 72:10 75:17 76:22 82:20 84:10 109:15 119:20 133:3 138:22 139:6 <b>Buffalo</b> 2:4 <b>building</b> 31:17 50:20 <hr/> <b>C</b> <hr/> <b>C</b> 3:14 32:22 33:1 <b>calculated</b>	100:13 <b>call</b> 24:11,25 27:7 29:1 72:1 75:20 86:21,23 93:23 94:9 <b>called</b> 1:15 4:4 13:6 <b>calls</b> 7:2 47:2 <b>caption</b> 48:24 <b>care</b> 101:1 <b>Carolina</b> 12:8,9 <b>case</b> 17:1,7 20:3 22:6 25:4 29:5 33:19 35:22 38:19 39:9 42:9 43:25 44:11,17 46:10,17 47:19 50:24 52:15 68:12 78:17 88:23 97:8 100:5 101:10 107:24 111:16 114:8 118:4,20 123:7 134:19 137:21 <b>cases</b> 43:23 <b>cashed</b> 85:12,16 <b>casualty</b> 11:19 12:2 <b>cause</b> 73:23 74:4,6,15,24 <b>cell</b> 7:5 <b>Central</b> 11:20 12:3,6 61:14 <b>certain</b> 32:6,8 53:17 86:9 <b>certainly</b> 43:17,24 133:19 <b>Certified</b> 1:21 143:6	<b>certify</b> 143:7,14,19 <b>cetera</b> 133:8 <b>change</b> 68:15 114:16 <b>changed</b> 114:14 <b>changes</b> 41:12 <b>charged</b> 85:25 <b>check</b> 66:9 137:4 <b>checked</b> 137:12 <b>checkmark</b> 19:24 <b>choice</b> 54:9 55:15 57:6,19 57:24 <b>churning</b> 139:3 <b>circumstances</b> 43:15 67:5 103:20 106:1 <b>Civil</b> 1:18 <b>claim</b> 3:17 13:5 15:11,12 16:1,3,8 23:1 24:6,8 24:22 25:1,3,5,6,21 25:22 27:20 46:17 47:9 55:21 59:19 60:19 62:11,13 63:10 67:10 71:23 77:17,18 78:8 93:17 93:19 94:3,12 95:10 108:23 115:5 117:13 128:3 <b>claims</b> 11:12,17,19,24,25 12:2,2,15,16,20 13:17,18 14:18,23 15:5 19:12 22:24 50:11 62:15 82:9
--	---	--	--

85:16 <b>clarification</b> 6:5,7 <b>clarify</b> 33:13 108:22 111:19 <b>clarifying</b> 102:7 126:25 <b>clarity</b> 119:18 <b>classes</b> 33:8 <b>clean</b> 5:9 <b>clear</b> 15:19 64:11 91:3,15 93:21 108:25 111:8 127:22 <b>clearly</b> 115:4 118:18 125:2 <b>client</b> 87:6 89:18 94:20 95:14 102:18 107:9 131:25 <b>clients</b> 84:20,21 <b>coach</b> 119:14 <b>coaching</b> 119:10 <b>Collier</b> 112:6 113:1,16 118:11,16 120:5 <b>colon</b> 114:10 <b>come</b> 23:6 25:5 97:6 <b>coming</b> 52:4 <b>commenced</b> 143:17 <b>commencing</b> 1:23 <b>comment</b> 123:25 <b>commentary</b> 100:16	<b>commercial</b> 12:1 <b>common</b> 97:3 <b>communicate</b> 36:4,9 56:15 <b>communicated</b> 37:6 56:11 <b>communicating</b> 6:25 <b>communication</b> 37:2 46:3 102:24 <b>communications</b> 78:2,5,15 93:16 94:2 103:2,8 134:25 <b>companies</b> 30:24 31:4 <b>company</b> 1:4,12,15 2:17 3:3 4:3,13 10:21,24 11:1,2 13:6 29:12 76:25 80:14 97:17 143:8 <b>company's</b> 29:19 <b>comparing</b> 34:24 <b>complaint</b> 9:25 10:4 14:24 15:1 15:2 17:4,6 35:21 52:22 68:9,12 69:5 69:8 70:13,21 71:7 71:11 80:22 84:13 84:17 <b>completed</b> 29:5 <b>completely</b> 119:2 <b>computers</b> 75:22 <b>concede</b> 108:12 110:17 119:21 <b>concerned</b> 120:6 126:15 <b>concerning</b>	111:20 <b>concludes</b> 36:22 <b>conclusion</b> 23:6,11 47:3,7 95:1 95:11,16 <b>Condition</b> 54:8 <b>conditions</b> 48:14 52:20 54:5 65:11,22 66:22 80:20 138:20 <b>conduct</b> 87:5 <b>confident</b> 99:17 <b>confines</b> 132:5 <b>confirm</b> 38:21 52:14 98:23 <b>confirmation</b> 23:2,10 24:2,13,15 27:13,17 37:10 59:23 60:11 <b>confirmed</b> 23:17 <b>confirms</b> 27:2 <b>conflicts</b> 54:17 <b>confused</b> 44:24 75:18 <b>confusing</b> 33:15 <b>conjunction</b> 55:22 93:23 <b>connected</b> 48:20 <b>connection</b> 10:16 33:18 56:11,15 63:10 117:9 137:19 139:19 <b>consider</b> 20:7,14,21 94:19,24 100:17 <b>considered</b>	60:15 95:8 124:1 125:23 127:9 133:8 <b>consistent</b> 52:10 69:1 135:10 <b>construction</b> 113:6 <b>consultation</b> 59:19 74:17 <b>consulted</b> 60:19 <b>contain</b> 53:11 57:24 <b>contained</b> 37:23 38:17 122:24 124:10 <b>containing</b> 66:20 <b>contains</b> 116:14 <b>contending</b> 53:4 <b>contention</b> 79:10 85:23 <b>context</b> 111:22 <b>continue</b> 52:3 134:16 <b>conversation</b> 18:3 56:22,25 63:12 108:21 112:19 <b>conversations</b> 57:1 81:15,18 <b>COOK</b> 143:3 <b>COOPER</b> 2:6 <b>copy</b> 37:13 44:1 101:5 135:8,9 141:13,24 <b>corporate</b> 77:14 <b>correct</b> 19:23,25 20:1 22:4 25:13 26:8,18 27:1 27:10 28:8 34:18 35:10,16 41:2 42:25
---	--	--	--



45:8 48:16 51:24 62:16,21 63:1 69:9 70:1 71:8 72:5,18 73:13,24 76:9 79:1 83:5,9,13 86:10 89:12,23,24 90:20 92:25 93:12,22 96:6 96:9,13,19 97:2,3 98:2 99:1 103:18 105:1,8,9,13 106:12 106:21 108:4,15 110:19 112:18 113:19,25 115:16 115:18,21 116:15 116:22 118:21 120:16 123:20 125:4 126:11 127:4 131:4,14 133:5,25 134:20 140:18 <b>correctly</b> 54:18 96:22 <b>correspondence</b> 47:18 108:24 135:7 <b>costs</b> 70:24 113:6 131:24 131:25 142:2 <b>counsel</b> 15:11,12,20 16:2,3,8 55:22,23 59:19 60:20 71:17,23,24 72:18 73:13 74:21 75:3 77:17,18 78:2 78:8,17 81:16 85:8 94:13 100:1,2 112:10,13 127:24 128:7 132:7 143:21 143:23 <b>count</b> 71:10,14,20 72:2 <b>counterclaims</b> 84:19,23 85:2,11 <b>COUNTY</b> 143:3 <b>couple</b> 8:15 82:17 127:19 132:20 138:13	<b>course</b> 6:10 7:1 28:16 32:1 91:16 100:17 128:3 <b>court</b> 1:2 4:23 7:20 58:9 76:5,10 84:1 110:3 141:4,12 <b>Courts</b> 1:19 <b>cover</b> 69:22 <b>coverage</b> 15:4 18:16 23:4,19 24:22 34:9 48:13 50:14 53:5 55:23 59:18 60:7,8 65:10 65:22 68:8 71:24 87:19 97:5 105:22 106:11 113:14 115:6,10 118:5 119:3 120:11,20,23 131:23 132:7 138:4 <b>covered</b> 103:24 116:3 <b>critically</b> 96:24 <b>Cross-Examination</b> 3:5 75:15 <b>Cruiser</b> 1:7 2:10 17:8 18:15 18:23 25:3,6 26:15 27:18 33:19 38:18 44:3,17 51:21 52:6 53:1 65:6 66:16 68:7 84:22 122:25 129:18 135:25 136:5,12,18,24 <b>Cruiser's</b> 19:14 25:7 44:10 85:23 <b>CSR</b> 144:8,11 <b>current</b> 8:21 10:16,17,18 11:10 <b>cursor</b>	33:24 109:20 <hr/> <b>D</b> <hr/> <b>D</b> 2:12 3:1,15 51:5,6 59:14 <b>Dana</b> 16:9 72:4 <b>Danzig</b> 2:12 4:12 <b>date</b> 13:14 17:2 23:8 27:9 42:4 45:18 48:15 61:1 62:24 70:24 102:25 115:25 128:9 129:21 130:17,20 <b>dated</b> 60:5 124:15 <b>dating</b> 63:4 <b>David</b> 3:18 22:23 26:7 56:4 59:17 60:14 62:15 62:21 68:6 <b>day</b> 1:24 19:21 22:12 27:8 89:7 92:13 108:1 134:17 143:17 144:2 <b>dead</b> 108:9 <b>deal</b> 36:4 <b>December</b> 1:25 143:18 144:2 <b>decided</b> 120:19 <b>decision</b> 15:7,15 16:11,25 59:15 69:11,16 70:7 74:14,23 131:22 <b>declaration</b> 15:3 <b>declarations</b> 51:24 86:5	<b>declaratory</b> 9:24 14:13,19 15:8 16:6,12,25 45:3 46:9 70:18 71:7,11 72:17 73:5 84:16 131:20 132:5 <b>deemed</b> 105:8 115:9 <b>deep</b> 49:2 <b>defendant</b> 1:13,16 2:16 4:14 <b>defendants</b> 1:9 2:10 15:6 <b>defending</b> 131:25 <b>defense</b> 48:13 68:18 70:17,23 131:24 <b>defer</b> 43:20 110:20 131:15 132:6 <b>define</b> 93:11 108:13 <b>defines</b> 140:6 <b>definitely</b> 39:16 <b>definition</b> 122:14 125:12 <b>degree</b> 13:21,22,23 14:7,10 <b>Delahunt</b> 2:2,2 3:19 6:11 7:11 7:16 21:14,23 28:18 44:19 46:19,22 47:4 57:3 59:25 61:10,16 61:20 64:7,23 65:13 65:25 66:24 74:18 75:20,21 77:24 79:2 79:13,22 83:14 84:5 85:20 86:16 87:8 90:12,21 91:5,25 92:6 93:24 97:19,24 100:7,15,23 101:11 101:14,23 102:4,11
--	--	--	--

102:17 105:20 110:21,22 112:14 114:20 116:5,23 117:5,21 118:22 119:5,13 120:9,17 121:4,13,22 122:9 122:13 125:5,14 126:12 132:2 137:7 137:14,25 140:25 141:14,19 <b>demand</b> 100:25 <b>demonstratively</b> 137:23 <b>denial</b> 65:10 66:22 <b>deny</b> 65:21 <b>department</b> 41:19 50:12 103:10 <b>depend</b> 67:4 82:4 <b>depending</b> 32:7 105:25 132:21 <b>depends</b> 28:24 36:7,13 80:12 103:19 <b>deposed</b> 10:15 <b>deposition</b> 1:14 3:11 4:16,19 5:1 6:10 7:1 8:8,19 9:5 9:10,12,14,21 10:5 18:6,19 21:9 28:2 33:1 46:7 51:6 57:3 58:7 67:12 70:9 75:4 76:23 77:5 79:16 101:19 102:5 110:4 128:14 143:10,15,17 <b>depositions</b> 1:20 <b>designated</b> 77:13,22 78:23 <b>designed</b> 40:21 99:18	<b>designee</b> 77:14 <b>determination</b> 23:5 24:18 <b>determine</b> 31:23 <b>determined</b> 35:11 54:14 <b>determines</b> 36:16 <b>deviate</b> 83:3 96:15,18 <b>deviating</b> 83:8,22 <b>differ</b> 125:9 <b>difference</b> 105:17 <b>differences</b> 99:2,7 103:4 <b>different</b> 29:12 31:7 33:8 57:19,21 69:4 80:15 80:15,16 86:1 95:9 97:6 107:18 115:1 118:7 119:2 123:22 136:18,25 138:5 <b>differently</b> 98:18 <b>difficult</b> 65:17 66:3 <b>dig</b> 11:21 23:20 32:14 <b>direct</b> 3:4 4:7 39:6 91:6,10 109:20 <b>direction</b> 143:13 <b>directly</b> 143:24 <b>Director</b> 12:15,16,20 <b>disagree</b> 101:12 <b>disclaim</b> 115:6	<b>disclaimer</b> 81:11 <b>discontinue</b> 73:22 <b>discovered</b> 64:21 74:12 128:4 <b>discovering</b> 137:1 <b>discovery</b> 46:9 100:4,13 <b>discuss</b> 93:18 124:8 <b>discussed</b> 23:21 56:5 63:18 104:4 112:4 <b>discussing</b> 32:17 <b>discussion</b> 112:17 114:22 131:13 <b>discussions</b> 78:16 94:11 <b>dismiss</b> 71:9 72:2 <b>dismissal</b> 71:20 <b>dismissed</b> 46:16 <b>display</b> 134:11 <b>dispute</b> 22:7 64:6 79:10,14 87:19 125:17 130:7 <b>distinction</b> 92:3 104:9 107:4,10 107:21 <b>distinctions</b> 101:8 <b>District</b> 1:2,2,19 143:2 <b>divulge</b> 81:16 <b>DJ</b> 35:21 70:18,21 132:1 <b>document</b> 9:18 18:10,13,17	25:23 47:23 48:6,8 51:14 61:25 67:16 67:20,23 68:3,4 74:12,22 77:7 88:18 100:11 102:1 107:11 109:16,24 128:18,23,24 129:1 129:2,5,7,9 135:4 <b>documentation</b> 46:12 <b>documents</b> 9:4,6,9,14,16 25:25 39:5 46:8 84:9 127:23,24 128:5 130:24 139:18 140:16 <b>doing</b> 6:3 10:3 119:7,18 <b>dont</b> 141:22 <b>doubt</b> 130:13 <b>dozen</b> 8:12,13 <b>drafted</b> 29:8,14 61:1 <b>drafting</b> 69:19 <b>draw</b> 73:16 <b>Drew</b> 26:11,12 <b>dropped</b> 120:15 <b>dual</b> 48:9 <b>due</b> 79:14 <b>duly</b> 4:5 143:9 <b>dwelling</b> 20:13 28:7,12 29:9 29:13,24 30:4 39:20 39:22 47:17 63:17 66:14 99:20 <b>dwellings</b>
---	---	--	--

33:4 40:18	40:21 99:18	116:11	3:17,18,19,20,21
<hr/>	<b>eligible</b>	<b>estimated</b>	18:1,6 27:23 28:2
<b>E</b>	118:7	113:7	32:22 33:1 51:4,5,6
<b>E</b>	<b>eliminated</b>	<b>et</b>	58:6,7 59:14 67:8
2:2 3:1,10,16 10:9	78:19	133:7	67:11,12 70:5,9
16:17,17 58:6,7,10	<b>emergency</b>	<b>evaluation</b>	75:4,9 110:2,4,11
<b>e-mail</b>	7:7	60:8	128:14,18,20,22
2:4,15 3:13,20 18:5	<b>employee</b>	<b>event</b>	130:11 134:24
24:25 26:6 27:6,10	143:20,22	36:15,19 38:24	135:5
27:18 42:17 100:24	<b>employer</b>	<b>events</b>	<b>Exhibits</b>
108:23 109:17	10:18	28:16	3:23
110:8,10,16 111:4,5	<b>employment</b>	<b>eventually</b>	<b>existed</b>
111:19,23 113:18	12:22,25	44:2	57:15 85:18
114:1,3 115:25	<b>endorsement</b>	<b>everybody</b>	<b>expected</b>
116:19 117:10	48:14 52:21,21,25	17:24	82:25 96:11,17
119:1,24 120:13	53:3,7,18,23 54:5	<b>everyone's</b>	<b>expedite</b>
<b>e-mail's</b>	55:12 57:14,22,24	18:2	142:1
116:8	58:20 59:5 65:12,23	<b>evidence</b>	<b>expedited</b>
<b>e-mails</b>	66:23 80:20 81:5	28:22 87:1,4 100:14	141:6,18,21
7:3 116:14 140:18	131:17 138:15,18	<b>exact</b>	<b>expended</b>
<b>earlier</b>	138:20 139:8,16,23	13:13 17:2	70:16
23:12 27:7,14 34:6	<b>endorsements</b>	<b>exactly</b>	<b>experienced</b>
35:22 39:21 49:1	58:15	37:7	132:7
57:7 63:18 84:8	<b>enforcement</b>	<b>examination</b>	<b>explain</b>
86:7 93:14,20 95:18	54:13	1:16 3:4,6 4:7 133:1	41:22 101:16 128:24
95:22 99:9 104:4	<b>entail</b>	<b>examined</b>	<b>explanation</b>
109:6 112:5 128:4	11:24	4:5	107:4
130:6 131:13,14,17	<b>enter</b>	<b>examiner</b>	<b>extent</b>
133:4,21 139:7	128:20	13:5,17,18 22:24	28:19 70:23 94:1
<b>earliest</b>	<b>entered</b>	<b>examiners</b>	<b>extremely</b>
86:13	62:21 130:11	12:1	43:21
<b>early</b>	<b>entire</b>	<b>example</b>	<hr/>
53:24 86:20 108:18	18:3 77:7	9:24 15:18 35:18	<b>F</b>
<b>education</b>	<b>entirely</b>	64:1 136:19,25	<b>F</b>
13:20	111:21	<b>exception</b>	3:17 67:11,12
<b>effect</b>	<b>entitled</b>	78:14	<b>face</b>
49:11	65:21 141:15	<b>exchange</b>	111:8
<b>efforts</b>	<b>entity</b>	111:6 112:6	<b>fact</b>
38:21 118:10	34:23 123:1	<b>exchanges</b>	23:16 68:21 69:3
<b>either</b>	<b>entry</b>	111:23	74:12 76:24 85:3
26:22 42:16 45:25	62:20,21	<b>exclusion</b>	131:23
46:1 94:6 109:5	<b>Eric</b>	58:19 59:4	<b>facts</b>
115:9 136:3	56:4,6 81:6,9	<b>excused</b>	34:21 60:15 67:4
<b>electronically</b>	<b>especially</b>	141:3	103:19 106:1
37:19	4:25	<b>exhibit</b>	<b>faint</b>
<b>elicit</b>	<b>established</b>	3:11,12,13,14,15,16	7:15

<b>fair</b> 17:6 18:23 29:25 30:1 42:16 82:2 91:11,14 92:17 106:5 113:11 126:21 140:4	124:25 127:11	87:14 139:10	<b>full</b> 10:8 62:13
<b>fairly</b> 43:5	<b>filed</b> 14:14 17:4 68:10,12 69:8 72:17,19,25 73:4,8 75:7 84:19 84:24 131:21	<b>focusing</b> 92:15 110:7	<b>fully</b> 46:5 68:23 84:14 87:22
<b>fairness</b> 95:6	<b>fill</b> 96:21	<b>follow</b> 31:22 82:13,21 83:1 95:20 96:12 100:21 107:14 108:10	<b>further</b> 39:7 118:12 120:7 140:21 143:14,19
<b>falls</b> 32:4 34:19 36:23	<b>filled</b> 30:3 66:14	<b>follow-up</b> 39:12,15 56:21 69:13 70:6,8 138:13	<hr/> <b>G</b> <hr/>
<b>false</b> 122:22 124:9,11,17	<b>filling</b> 38:9	<b>followed</b> 115:20 116:13	<b>G</b> 3:18 70:5,9
<b>familiar</b> 14:13,17 17:10 21:2 21:5 47:22 58:15 62:9 81:23	<b>fills</b> 28:16,20	<b>following</b> 49:1 70:12 120:25	<b>GBA</b> 29:2,3 31:6 41:21,23 41:25 43:20 53:12 53:15,19,19 56:9 103:15
<b>family</b> 7:7	<b>final</b> 23:2,5,5,9,16 24:2,13 24:15 27:12,16 59:22 60:11 72:1	<b>follows</b> 4:6	<b>general</b> 1:11 2:16 4:12 11:19 12:1 29:1,4 30:11 103:25 133:12,15
<b>far</b> 11:23 27:22 30:22 37:20 49:10 50:2,16 55:1 58:18 63:19 134:3	<b>financially</b> 143:23	<b>forget</b> 100:20 101:2	<b>generally</b> 14:25 31:25 41:14 50:5 58:17 59:16 65:21 66:12,16 67:3 82:6 84:13 87:23 129:10 139:9 140:14
<b>fast</b> 48:2	<b>find</b> 122:14	<b>form</b> 24:15,23 27:17 29:19 37:7,10 39:22 51:20 52:2 53:11,13 60:1 64:8 83:14 97:5 100:3,6 103:6 106:25 137:8 140:5	<b>generically</b> 59:1
<b>February</b> 115:24 118:21 135:6	<b>finish</b> 5:11,14	<b>format</b> 136:7	<b>gentlemen</b> 135:14
<b>federal</b> 1:18 79:8	<b>finishing</b> 127:13	<b>former</b> 8:22	<b>getting</b> 22:2 81:18 121:7
<b>fees</b> 70:16,23	<b>first</b> 4:5,17 24:1,3 26:21 26:21 27:2 41:6 45:1,7 71:10 80:21 86:21 95:10 143:9	<b>forms</b> 38:9 51:25 139:17,18	<b>GGL</b> 136:1,10
<b>fell</b> 35:12	<b>five</b> 31:14 56:21	<b>forth</b> 114:12	<b>GGL0026060</b> 116:20
<b>Fifth</b> 2:13	<b>five-year</b> 93:6	<b>found</b> 24:6	<b>GGL0026067</b> 48:19 52:10 111:12
<b>fight</b> 102:20	<b>flag</b> 120:8	<b>four</b> 31:14 57:16	<b>GGL0031463</b> 129:25
<b>figures</b> 71:3	<b>Floor</b> 2:8,13	<b>fourth</b> 112:22	<b>give</b> 4:16 5:22 76:4 95:3 110:12 122:17 128:10 131:6
<b>file</b> 15:8 16:12,25 24:6 24:22 25:1,22 46:10 62:11,24 121:16 122:11 123:11,24	<b>Flyway</b> 1:8 2:11 26:17 27:18 62:24 84:22	<b>frame</b> 109:1	
	<b>focus</b>	<b>front</b> 77:5 101:24 109:17 114:10	

135:11 <b>given</b> 99:15 108:9 118:3 120:3 <b>gives</b> 126:17 <b>giving</b> 76:23 <b>gleaned</b> 24:10 <b>go</b> 17:16,25 20:17 28:17 30:6 45:6 46:23 57:8 75:8 80:17 82:12 104:19 121:21 132:23 <b>goes</b> 30:7 95:19 110:8 <b>going</b> 4:16 5:17 10:7 17:16 20:17 27:24 28:18 32:15 42:20 47:10 47:16,17 48:2 51:1 51:9 52:7,19 54:2 58:2,2 61:24 62:19 63:16 64:7 71:6 72:9 82:16 91:6 99:21 101:21 105:22 108:10 111:10 119:7,9 127:14 128:20 132:19 138:23 139:11 <b>good</b> 4:9 12:11 21:12 61:6 61:8 126:24 <b>Gray</b> 112:6 113:1 120:4 <b>Great</b> 139:6 <b>ground</b> 4:17 <b>guess</b> 5:19,24 21:25 24:3 26:20 29:22 37:10 55:14 84:14	<b>guideline</b> 126:4 <b>guidelines</b> 3:14 31:21 32:4,7,14 32:24 33:6,11,17 34:20,22 35:1,13 36:24 40:25 41:5,13 41:15,20 42:6,11,22 64:12 82:22 83:1,9 83:23 93:10 95:5,21 96:12,19 104:3,8 107:13 108:13 115:16,19 122:6 126:2 133:4,21 134:3,10 <b>guys</b> 61:9 76:18 <hr/> <b>H</b> <b>H</b> 3:10,19 75:4,9 <b>half</b> 8:12,13 61:8 <b>handle</b> 12:1 <b>handled</b> 59:7 <b>happen</b> 65:18 83:13 <b>happened</b> 65:4 97:6 <b>happening</b> 64:15 97:4 <b>happens</b> 132:21 <b>hate</b> 104:6 <b>Hawley</b> 1:4,15 3:3 4:3 11:2,3 14:15,23 15:4,9,14 18:16 22:22 23:4 25:2,20 29:15,17,25 30:17,20,24 31:3,10 32:10 33:7,12,18 34:11,18 35:6,16,19 36:1,4,10,18 37:3,6	37:11,14,16 38:10 38:25 39:2,3,4,6,13 39:21 40:17 41:6,19 44:1,12,16,18 45:12 45:23 46:3 48:19,22 49:15,18 50:8,23 52:25 53:4,10,14 56:12,16 57:7,10,18 58:4 59:13 63:22 64:4,13,21 65:9,20 66:19,23 70:15,24 71:3,9,19 73:22 76:25 78:24 80:3,9 80:20 84:24 85:4,11 85:16 87:2,4,6,19 93:11 94:19,23,25 95:3,4,13,19,22 96:5,7 97:1,15 98:1 98:5,16 99:10 100:5 102:24 103:3,15 105:25 106:22 107:15,20 109:5 114:17,23,24 115:6 115:15 116:1 118:11 120:6,21,24 121:9 122:15 123:1 123:2,17 125:21 126:3 128:2 131:1 131:11 135:25 136:5,11,17,23 137:3,12 140:14 143:8 <b>Hawley's</b> 9:18,24 19:12 23:19 24:22 35:21 37:12 40:2 42:10 46:16 53:7 64:4 65:11 68:16 71:23 74:22 82:22 99:4,12,19 103:4 109:24 110:18 126:2 <b>head</b> 5:5 56:8 83:19 <b>health</b> 8:3 <b>hear</b>	7:12,18,21 84:2 <b>heard</b> 6:7 <b>help</b> 111:19 <b>helpful</b> 141:9 <b>helps</b> 135:3 <b>hereunder</b> 54:11 <b>hide</b> 87:6 <b>high</b> 43:8 <b>highest</b> 13:20 <b>highlight</b> 73:17 111:10 <b>highlighting</b> 73:18 <b>Highway</b> 129:19 <b>Hoffman</b> 3:18 22:23 23:22 24:1,9 26:7 56:4,6 60:14 62:16,22 63:8 68:7 69:15,19 86:8 86:22 93:18,25 94:11 108:19,24 <b>Hoffman's</b> 27:6 59:18 69:14 93:16 <b>hold</b> 12:13 <b>holding</b> 10:23 <b>honestly</b> 73:7 <b>horse</b> 108:9 <b>host</b> 62:25 76:8,12 <b>hour</b> 61:7,17 <b>human</b>
--	--	---	---



117:24 <b>hypothetical</b> 65:16,17 138:3 <b>hypothetically</b> 34:14	122:23 124:10,12,18 <b>incorporated</b> 68:23 139:24 <b>incorrect</b> 22:15 34:15 122:22 124:9,11,17 137:24 <b>increases</b> 43:10 <b>incurred</b> 70:24 <b>Indemnity</b> 13:7 <b>independent</b> 78:6 <b>indicated</b> 34:5,7 <b>indicates</b> 90:14 <b>indirectly</b> 143:24 <b>individual</b> 71:25 <b>individually</b> 50:9,25 76:24 <b>industry</b> 43:6 97:4 133:12 <b>ineligible</b> 42:24 43:4,13,16 103:14,18 105:8,11 115:9 118:6 133:8 133:24 134:10,12 134:15 <b>inexhaustive</b> 104:25 <b>Info</b> 62:22 <b>information</b> 20:20 22:25 24:10,18 24:19,24 29:20,21 32:3 34:15 37:23 38:5,12,17 39:25 40:22 74:25 85:6 99:19 112:23 113:3 122:23 123:23,25 124:10,12,18 127:9 136:21 137:18	139:19 140:9 <b>informed</b> 113:17 125:3 <b>informing</b> 116:1 <b>initial</b> 23:10 45:1 63:12 81:11 <b>initially</b> 35:2,4 <b>instance</b> 64:19 83:18 <b>instances</b> 63:19,24 140:1 <b>institution</b> 14:8 <b>instructs</b> 6:14 <b>insurance</b> 1:4,12,15 2:17 3:3 4:3,13 10:21 11:2 17:8,14 19:15 29:12 29:19 30:5 31:2,3 37:24 38:3,12,18 43:6 44:11 50:7 55:18 87:25 88:7 94:21 96:22 97:4,16 113:23 122:25 124:5,7 136:17 137:19 143:8 <b>insure</b> 133:17 <b>insured</b> 24:11,19 28:16,20 30:4 36:25 48:10 51:22 52:2 63:12 66:7 86:21 87:24 96:21 107:20 108:25 113:13 120:19 129:17 137:2 138:4 140:9 140:12 <b>insureds</b> 33:9 84:21 <b>insurer</b> 10:25 97:7,8 98:12	131:21 <b>insurers</b> 133:16 <b>interchangeably</b> 88:17 <b>interested</b> 143:23 <b>interfere</b> 47:5 <b>internal</b> 71:18 74:13,16 75:1 <b>internally</b> 73:21 74:11 <b>Internet</b> 106:20 <b>interpretation</b> 54:12 55:9 <b>interpreted</b> 54:22 <b>intervener</b> 4:14 <b>Intervenor</b> 1:13 2:16 <b>investigate</b> 63:9 <b>investigated</b> 138:5 <b>investigation</b> 22:25 23:13 59:18 60:7,16 <b>inviting</b> 101:16 <b>invoice</b> 3:21 129:11,12,21 130:6,13,18 <b>involve</b> 19:13 <b>involved</b> 21:7 63:21 64:20 69:16 <b>involves</b> 85:3 <b>issuance</b> 44:6 46:4 126:4 139:20 <b>issue</b>
---	---	---	--

15:5 21:16 29:1 32:5 34:17 35:15 36:25 43:22 44:21 45:2 50:23 59:15 67:6 69:7,12 70:7 86:23 95:3,20 98:3 99:16 106:12 111:16 112:2 114:7 115:2 116:4,9 118:3 118:17,20 119:22 123:7 132:4 138:6 140:7	70:18 71:7,11 72:17 73:5 84:17 131:21 132:5	49:10 53:12,17,21 57:9 70:7,22 72:19 73:7,17 81:1,2,14 81:16,17 84:21 85:13 86:3,19 88:15 91:21,23 97:12 98:5 98:6,11,12 99:6,11 100:2,24 102:8,14 103:10 113:8 118:15 120:22 121:9 123:21 126:19 131:7 132:14 138:22	<b>laws</b> 54:21,23 <b>lawsuit</b> 9:19 15:6 22:17 <b>lead</b> 100:13,16 <b>leading</b> 71:19 <b>learned</b> 22:24 23:12 85:8 86:22 115:7 <b>lease</b> 91:16,17 92:22 93:4 93:5,5,6,6 <b>leave</b> 6:21 13:8 <b>led</b> 39:8 59:14 74:13,23 87:19 <b>legal</b> 47:3,6 54:24 55:20 71:21 95:1,11,16 132:4 <b>length</b> 92:21 <b>let's</b> 11:21 17:25 20:10 27:23 39:10 45:6 46:13 47:13 51:4 57:5 60:9 61:5 67:7 85:14 87:14 92:18 102:23 112:22 130:4 139:10 <b>letter</b> 3:15,18,19 48:10,16 48:24 49:25 51:3 52:11,14 55:19 56:2 59:12,15,21 60:4,11 61:1 68:6,13,17,17 68:21,24 69:13,19 69:24,25 70:6,8 72:7,16 73:11,12 74:17 75:2 81:12 <b>letterhead</b> 129:15 <b>lettering</b>
<b>issued</b> 31:10,24 32:12 33:19 37:4,12,14 44:2,16 45:19 47:18 52:6 53:19 55:16 59:21 63:20 64:2,19 65:7 66:18 105:23 106:2 119:3 120:23 123:16 129:16 134:20 135:25 136:4,11,17,24	<b>July</b> 62:25 <b>jump</b> 48:4	<b>knowing</b> 85:12 121:10 <b>knowledge</b> 20:16,23 38:14 78:7 80:4,16,23 81:2,3,4 83:7,22 95:17 124:13 <b>knowledgeable</b> 78:25 79:5,17,24 80:3,10 81:20 82:1 82:7 83:21 <b>known</b> 65:5 109:6 <b>Kuipers</b> 1:21 76:9 143:5 144:8	
<b>issues</b> 34:14 39:8 80:25 108:7 <b>issuing</b> 36:18,21 50:6,21 56:1 107:14	<b>K</b> 16:17,17 <b>Kanelkallakes</b> 77:19 <b>Kanellakes</b> 16:10 72:3,4 74:19 77:20,21 112:15 <b>Katzenmeier</b> 2:12 3:4,7 4:8,11 7:14,22 16:18 17:23 18:8 21:19,24 44:22 46:24 47:12 51:8 58:11,13 61:4,13,18 61:23 67:14 75:6 76:6 82:15 88:6,9 104:11,15 109:12 127:17 132:24 133:2 134:22 135:5 135:15 138:8,19 141:10	<b>keep</b> 82:16 <b>Kevin</b> 10:9 60:1 <b>Kevin's</b> 7:13 75:22 <b>kind</b> 129:11 <b>knew</b> 64:1 118:16 121:2 <b>know</b> 5:20 6:17 16:5,20,24 17:2 21:17 26:11 30:22 31:11,12 33:23 37:5 41:5,10 41:12 42:8,15,18 44:7 47:6 48:2	<b>L</b> <b>L</b> 10:10,10 16:17,17 <b>lack</b> 78:12 <b>language</b> 106:24 131:16 <b>larger</b> 43:24 <b>lastly</b> 6:24 <b>law</b> 2:2 3:19 13:21,22,23 54:9,15,17 55:15,18 57:6,19,24 131:12 131:19 132:8
<b>iteration</b> 42:5	<b>Kevin</b> 10:9 60:1 <b>Kevin's</b> 7:13 75:22 <b>kind</b> 129:11 <b>knew</b> 64:1 118:16 121:2 <b>know</b> 5:20 6:17 16:5,20,24 17:2 21:17 26:11 30:22 31:11,12 33:23 37:5 41:5,10 41:12 42:8,15,18 44:7 47:6 48:2	<b>known</b> 65:5 109:6 <b>Kuipers</b> 1:21 76:9 143:5 144:8	
<b>J</b> <b>J</b> 3:21,23 128:14,18,22 <b>job</b> 13:16 <b>jobs</b> 8:22 <b>joined</b> 62:25 <b>judgement</b> 16:12 <b>judgment</b> 9:25 14:14,19 15:8 16:6 17:1 45:3 46:9	<b>keep</b> 82:16 <b>Kevin</b> 10:9 60:1 <b>Kevin's</b> 7:13 75:22 <b>kind</b> 129:11 <b>knew</b> 64:1 118:16 121:2 <b>know</b> 5:20 6:17 16:5,20,24 17:2 21:17 26:11 30:22 31:11,12 33:23 37:5 41:5,10 41:12 42:8,15,18 44:7 47:6 48:2	<b>known</b> 65:5 109:6 <b>Kuipers</b> 1:21 76:9 143:5 144:8	

<b>letters</b> 68:25 69:7 98:13 <b>level</b> 13:20 <b>levels</b> 80:16 <b>liability</b> 11:19 12:2 <b>likewise</b> 119:7 <b>limitation</b> 139:17 <b>line</b> 111:13 113:24 114:6 114:9,11 116:12 135:19 <b>lines</b> 22:1 <b>list</b> 21:1 80:18 104:25 <b>listed</b> 19:20 42:24 69:23 77:15 105:4,11 113:21,23 133:7,24 137:2 <b>Listen</b> 141:22 <b>litigation</b> 15:24 24:7 119:23 121:12 131:4 <b>little</b> 7:15 11:22 22:10 23:21 33:14 52:8 66:3 90:4,7 126:14 135:13 <b>lived</b> 90:20 141:20 <b>lkattenmeier@rik...</b> 2:15 <b>LLC</b> 1:7,8 2:6,10,11 129:18,19 <b>LLP</b> 2:12 <b>logically</b> 116:17	<b>long</b> 7:9 11:6,13 34:19 53:22 77:25 80:18 132:22 <b>long-term</b> 91:16,23 93:4 <b>look</b> 26:7 32:23 62:8 77:6 86:5 118:11 120:6 125:12 126:23 128:23 131:9 <b>looked</b> 133:21 <b>looking</b> 42:21 48:18 51:20 54:4 59:11 126:16 <b>looks</b> 19:7 20:24 26:16 42:2 54:2 62:10 76:13 90:4,6 129:22 <b>loss</b> 22:19 23:14 43:11 53:5 63:15 86:24 <b>Lots</b> 120:1 <b>loud</b> 26:23 89:5 112:25 139:14 <b>Lucas</b> 2:12 4:10 <b>Luke</b> 21:14 44:19 76:2 82:12 88:3 104:5 109:10 127:14 132:22 135:4 138:17 141:1 <b>lunch</b> 138:23 <hr/> <b>M</b> <hr/> <b>mail</b> 42:17 <b>Main</b> 2:3 <b>major</b> 118:3	<b>making</b> 115:5 <b>manage</b> 11:18 <b>Management</b> 1:8 2:11 <b>manager</b> 26:14 <b>managing</b> 11:23 29:4 30:11 <b>mandatory</b> 53:13,16,18 <b>March</b> 11:15,16 12:23 53:25 54:1 <b>mark</b> 17:25 27:23 32:21 51:4 58:4 67:9 70:4 75:8 128:21 <b>marked</b> 18:7 19:25 28:3 33:2 35:23 39:12 51:3,7 58:8 67:13 70:10 75:5 110:5,11 128:15,18,20 <b>matter</b> 4:13 23:22 35:7 65:9 68:20 73:21 74:11 78:10 112:8 131:12 <b>matters</b> 54:10 <b>mean</b> 7:2 9:23 15:16 21:19 21:25 36:20 37:9 38:20 42:12 49:12 53:10 54:21 57:13 60:4 81:5 83:12 106:22 115:4 116:17,21,22 117:2 117:4,8 118:1 129:6 <b>means</b> 4:18 5:4 30:10 34:4 80:7 106:19,23 132:15 <b>media</b> 14:7	<b>medications</b> 7:24 <b>medium</b> 42:12 <b>meeting</b> 94:4 <b>memory</b> 26:1 <b>mention</b> 40:14 <b>mentioned</b> 10:15 18:18 19:11 24:14 32:13 33:21 34:16 42:25 45:15 46:14 49:4 66:11 81:7 122:4 <b>MGA</b> 30:8,9,16 <b>MGAs</b> 31:8,14 <b>MH1305</b> 3:20 110:25 <b>microphone</b> 7:13 <b>Middleton</b> 112:7,25 <b>mind</b> 122:14 138:17 <b>misrepresentation</b> 19:16,17 20:3,8,15 20:22 22:13 28:15 87:11,14 88:23 <b>misrepresentations</b> 19:13 <b>misrepresenting</b> 87:18 <b>mistake</b> 65:24 117:20 <b>mode</b> 7:6 <b>moment</b> 66:13 74:2 <b>Monday</b> 141:6,8 <b>money</b> 92:23
--	--	---	---

<b>month</b> 92:23 <b>monthly</b> 89:16 90:1,11,16,25 91:2,15 92:18 93:3 108:3 <b>months</b> 34:2 91:1 93:12 108:14 <b>morning</b> 4:9 <b>mouth</b> 21:22 <b>move</b> 102:21 135:13 <b>movement</b> 135:14 <b>moving</b> 109:20 <b>Mt</b> 1:4,15 3:3 4:3 9:18 9:24 11:2,3 14:15 14:23 15:4,9,14 18:16 19:12 22:22 23:4,19 24:22 25:2 25:20 29:15,17,25 30:17,20,24 31:3,10 32:10 33:7,12,18 34:11,18 35:6,16,19 35:21 36:1,4,10,18 37:3,6,11,12,14,16 38:10,25 39:2,3,4,6 39:13,21 40:2,17 41:6,19 42:10 44:1 44:12,16,18 45:12 45:23 46:3,16 48:19 48:22 49:15,18 50:8 50:23 52:25 53:4,7 53:10,14 56:12,16 57:7,10,18 58:4 59:13 63:22 64:4,4 64:13,21 65:9,11,20 66:19,23 68:16 70:15,24 71:3,9,19 71:23 73:22 74:22 76:25 78:24 80:3,9	80:20 82:22 84:24 85:4,11,16 87:2,4,6 87:19 93:11 94:19 94:23,25 95:3,4,13 95:19,22 96:5,7 97:1,15 98:1,5,16 99:4,10,12,19 100:5 102:24 103:3,4,15 105:25 106:22 107:15,20 109:5,24 110:18 114:17,23 114:24 115:6,15 116:1 118:11 120:6 120:21,24 121:9 122:15 123:1,2,17 125:21 126:2,3 128:2 131:1,11 135:25 136:5,11,17 136:23 137:3,12 140:14 143:8 <b>multiple</b> 114:12 <hr/> <b>N</b> <hr/> <b>N</b> 1:21 3:1 10:9 16:17 143:5 144:8 <b>name</b> 4:10 10:8 16:9,14 25:10,12 58:23 75:18 <b>named</b> 52:2 <b>names</b> 22:1 <b>Nationwide</b> 1:11 2:16 3:11 4:12 18:1,6 27:23 28:2 32:22 33:1 51:5,6 58:5,7 59:14 67:10 67:12 70:4,9 75:4,9 110:4 128:14 <b>necessarily</b> 93:17 <b>necessary</b> 36:17 38:25	<b>need</b> 5:2,9 6:16 7:17 35:13 59:6 67:9 74:3 87:20 102:15 113:3 141:8,20 <b>needed</b> 85:13 133:22 <b>nefarious</b> 87:5 <b>never</b> 112:18 114:13 119:3 130:15 <b>new</b> 1:2 2:4,8,8,14,14 54:16,16,21,23 55:6 55:10,13,18 57:6 123:15 131:12,20 132:8 143:2 <b>nine</b> 31:7,15 <b>nine-month</b> 93:5 <b>noon</b> 138:25 <b>normal</b> 28:15 <b>note</b> 63:10 67:10 <b>notes</b> 3:17 24:6,9,23 25:1 27:20 62:11,14,15 108:23 <b>notice</b> 1:17 25:20 48:11 49:4 77:4 79:18 122:16 <b>noticing</b> 59:12 <b>notwithstanding</b> 54:16 <b>November</b> 3:15 48:16 51:3 56:1 59:12,22 60:5 61:3 <b>number</b> 48:19 52:8,9,11 69:23 111:16,24	116:14 129:25 136:10 <b>numbers</b> 135:18,24 136:8 <hr/> <b>O</b> <hr/> <b>O</b> 10:9 <b>oath</b> 4:18 <b>object</b> 6:11 28:19 59:25 64:8 100:15 <b>objected</b> 84:3 <b>objection</b> 6:13 64:24 65:14 66:1,25 77:24 79:2 84:3,6 85:20 86:16 87:8 90:12,21 91:5 91:25 92:6 97:19,24 105:20 114:20 116:5,23 117:5,21 118:22 120:9,17 121:4,13 122:9 125:5 126:12,20 132:2 137:7,14,25 <b>obligated</b> 141:24 <b>obligation</b> 79:23 <b>obtain</b> 13:23 14:10 29:5 <b>obviously</b> 57:16 <b>occasion</b> 112:9 <b>occupants</b> 43:9 <b>occurred</b> 57:2 60:22,24 <b>occurring</b> 121:3 <b>offer</b> 50:3 <b>offered</b>
---	---	--	---

49:25 <b>official</b> 144:1 <b>Oh</b> 56:20 <b>okay</b> 4:22 5:8,15,17,23 6:2 6:22,24 7:8,10,16 7:23 8:7,10,13,18 8:23 9:3,8,14,20,23 10:6,11 11:3,9,13 11:21 12:5,11,19,24 13:2,11,15,18,22 14:1,4,9,12,17 15:7 15:12 16:3,19 17:5 17:10,13,16,20,25 18:9,12 19:3,9,23 20:5,10,17,24 21:5 21:12 22:9,21 23:20 23:25 24:12 25:2,12 25:16,24 26:2,5,10 26:20 27:1,9,21,24 28:10 29:8,13,22 30:2,12,15,22 31:1 32:13,18,21 33:5 34:13 35:3,8,18 36:3,9,15 37:1,9,15 37:20 38:10,15,24 39:9 40:10,24 41:4 41:18 42:1,10,16,20 44:9,14 45:6,11,14 45:18,22 46:1,13 47:22 48:4,7,15,25 49:14,22 50:15,20 51:1,9,13 52:5,7,16 52:19,24 53:6,9,21 54:1,8,20 55:1,25 56:5,10,14,24 57:5 57:18 58:2,11,18 59:9,11,20 60:21 61:4,20 62:8,12 63:7,16,25 64:18 65:2,20 67:7,15,22 68:2,4,11,15,25 69:6,11,22 70:3,14 70:22 71:2,6,15,25	72:7,9,13,16 73:3 73:15,20 74:9 75:6 75:24,25 76:14,15 76:18,21 77:3,11,18 78:22 80:2,17 81:6 82:11,20 83:17 84:12,18 86:7 87:13 88:14,25 89:11,18 91:21 93:14 94:10 94:23 95:15 96:25 97:15,22 98:8,14,25 99:25 100:9 101:20 103:17,22 105:10 105:15 107:3 109:9 109:15,19 110:17 111:3,18 112:1,4 113:8,16 114:13,16 115:3 116:11 117:25 119:8 120:3 120:4,14 121:24 122:12 123:5,14 124:16 125:15 126:1 127:12 128:11 129:4,12,16 129:20,24 130:3,10 130:17 131:6,10 132:9,14,17 133:19 134:22 135:23 136:3,9,23 138:8,16 139:6,10,11,13 140:16,20 <b>once</b> 28:13 30:2,4 31:17 72:10 127:19 <b>one-bedroom</b> 90:2 <b>ones</b> 78:20 <b>online</b> 42:23 105:12,19 106:3,17,18 107:2 <b>operation</b> 43:18 106:4 <b>operations</b> 42:24 43:4 105:12,19 106:17,19 107:2	134:15 <b>options</b> 133:23 134:12 <b>Ounce</b> 129:18 <b>outside</b> 55:22 71:23 94:13 112:19 132:6 <b>oversee</b> 11:25 <b>oversees</b> 81:24 <b>owned</b> 30:20 65:6 <b>owner</b> 126:5 <hr/> <b>P</b> <hr/> <b>P</b> 2:6,7 <b>page</b> 3:2,11 20:11,12,20 48:5 51:24 54:4 67:25 88:19 110:9 111:3 130:3,4,5 <b>pages</b> 77:16 86:5 104:18 <b>paid</b> 90:15 128:9 130:18 <b>paper</b> 95:4 <b>paragraph</b> 26:21 68:23 74:2,5 <b>parent</b> 11:1 <b>parentheticals</b> 140:3 <b>part</b> 9:17 12:9 18:22 19:5 46:11 53:15 70:18 89:2,11,14 91:22 92:15,16 98:3 107:11,13 123:23 125:23 139:23 140:5 <b>participating</b>	93:24 <b>particular</b> 16:7 29:10 42:5 55:13 58:16 61:1 67:4 87:21 103:20 107:24 110:16 120:20 123:12 135:17 <b>particularly</b> 101:1 <b>parties</b> 128:6 143:21 <b>party</b> 55:25 <b>pause</b> 6:13 <b>pay</b> 90:18 92:23 141:22 <b>payment</b> 49:15,19 85:3 121:1 123:8 130:5,20 <b>pending</b> 6:19 <b>people</b> 80:14 95:9 112:20 <b>people's</b> 81:2 <b>Perfect</b> 6:2 7:8 <b>performance</b> 54:13 <b>period</b> 45:9,16 46:15 48:21 49:3,6,8,11,16,20 49:23 50:22 58:5 85:5 86:1,13,14 109:7 123:17 130:14 <b>person</b> 78:23,24 79:16 <b>personal</b> 7:5 143:13 <b>pertaining</b> 1:19 39:7 41:15 <b>phone</b> 2:9,14 7:2,4,5 24:10
--	--	--	---



24:25 27:7 86:21,23 <b>phonetic</b> 77:19 <b>photo</b> 75:19 <b>physical</b> 42:17 <b>piece</b> 24:17 <b>Pierantoni</b> 2:6,7 3:5,24 16:13 75:13,16,24 76:13 76:17,20 78:3 79:9 79:11,20 80:1 82:11 82:19 84:7 88:3,8 88:13 91:9,12 97:25 99:25 100:9,22 101:3,13,20 102:2,6 102:13,19,22 104:5 104:14,17,20 109:9 109:13,14 110:1,6 110:24 111:1 119:9 119:16,19 121:23 122:12,17,19 125:11,15,19 126:13,21 127:1,12 127:21 128:16 132:17 135:2,11 138:12,21 139:2,5 140:20 141:7,16,25 <b>Pierantoni.139</b> 3:8 <b>pinpoint</b> 128:8 <b>place</b> 59:24 94:12 123:15 123:18 131:23 <b>placed</b> 109:16 <b>Plaintiff</b> 1:5 2:5 <b>pleading</b> 47:8 <b>pleadings</b> 9:21 <b>please</b>	5:11 6:5,17 10:8,12 16:23 47:25 67:25 100:11 119:8 <b>PLLC</b> 2:2 <b>point</b> 10:2 17:18 22:13 24:3 75:20 84:17 86:10 105:8 <b>pointed</b> 39:19 <b>points</b> 107:20 <b>policies</b> 37:16 50:7,17,18 53:7,11,13,14,18 57:10 63:20 95:4 107:14 111:25 113:23 133:9 135:24 136:4,4,11 136:17,24 <b>policy</b> 3:16 15:4 22:18 31:10,23 32:5,12 33:12,18 34:17 35:15 36:11,18,21 36:25 37:3,5,11,14 43:22 44:2,6,16,21 45:1,2,9,16,21 46:15 48:11,19,21 48:22 49:6,8,10,12 49:16 50:23 52:6,9 52:11 54:14,22 55:10,12 56:12,16 57:8 58:3,4,16,20 58:23 59:13 60:17 60:18 64:3,19 65:8 65:23 66:18,23 69:23 85:5 86:5 103:15 106:2,13 111:7,11,16 112:1 114:7 116:4,4,14 120:25 121:10,17 122:2,8,15 123:7,16 123:20 124:22,25 125:13,16,21 126:3	126:5,5 127:6,7 129:25 130:13 131:8,9 135:18,24 136:7,10,14,15 137:2 138:6 139:21 139:24 <b>portion</b> 62:14 92:20 <b>portions</b> 27:6 <b>position</b> 10:16 11:10,14 12:12 12:13 13:3,4,6,9,12 68:8,16,18 131:11 <b>positions</b> 10:17 <b>possession</b> 74:23 <b>possibility</b> 115:7 116:2 118:12 <b>possible</b> 83:17,20,25 88:4 113:15 117:11,14 118:24 119:21,25 120:1,2,4 136:16,21 <b>possibly</b> 118:19 <b>potentially</b> 103:24 <b>power</b> 95:3 <b>practice</b> 54:15 <b>precludes</b> 53:4 <b>prefer</b> 61:12 <b>prefix</b> 136:2 <b>premium</b> 43:23 49:15,19,22 85:3,12,17,25 86:2 121:1 123:8 128:9 <b>premiums</b> 86:4 <b>preparation</b>	10:4 21:8 46:6 57:2 <b>prepare</b> 9:11,13 <b>prepared</b> 29:11 79:7,24 124:4 <b>presence</b> 94:13 <b>present</b> 31:6 57:4 81:17 112:10,20 134:17 <b>presently</b> 67:10 <b>President</b> 22:4 27:3 <b>presumably</b> 51:23 134:18 <b>previous</b> 57:23 68:17 86:2 95:7 116:13 136:13 <b>previously</b> 8:20 114:23 <b>print's</b> 90:6 <b>printout</b> 62:11 <b>prior</b> 9:5,9,21 10:17 12:12 18:18 22:18 23:4,19 24:1,21 44:5 46:4 47:8 57:19 68:8,21 69:25 <b>privileged</b> 78:5 <b>privy</b> 78:15 <b>probably</b> 44:7 <b>problem</b> 21:17 <b>problems</b> 8:4 <b>procedure</b> 1:18 15:22 71:19 138:2 <b>process</b> 23:13 28:11 29:3
--	--	---	---

36:6,10,17,21 37:22 39:1 59:8 60:10 64:5,17 81:24 82:2 82:8 99:17 104:23 105:3 111:24 122:7 125:20,22,24 126:10 127:3 140:10 <b>processes</b> 127:5 <b>produce</b> 141:24 <b>produced</b> 9:17 24:7 46:8 79:5 100:3,8,11 102:16 127:22 128:6 <b>product</b> 28:24,25 30:7 31:2,3 31:7,13 41:25 53:12 53:15,20 56:9 81:24 134:16 <b>production</b> 9:18 100:19 109:25 110:19 <b>Professional</b> 1:23 143:7 <b>program</b> 103:16 <b>promise</b> 138:24 <b>prompted</b> 63:8 68:13 137:3 <b>promulgated</b> 41:6 42:6 <b>proper</b> 4:16 <b>properties</b> 19:21 22:11 43:10 87:24 89:6 92:12,24 106:21 113:22 116:9 133:7,18 137:4,13,20 138:3 <b>property</b> 21:6,15 22:5,16,20 23:2,3,14 24:20,21 26:14,14 34:9 39:17	59:23 60:12 63:4,13 63:14 64:1 65:6 85:19 86:23 90:2,3 90:11,15,19,24 91:1 113:4,17,19,21 114:2,4 115:1,8 116:3,19 117:12 118:16,20 119:2,22 119:23 120:21 121:3,11 123:19 131:3 136:19,25 137:1 <b>provide</b> 7:25 8:5 79:23 113:4 <b>provided</b> 8:25 29:19 33:6,11 42:11 64:13 89:22 122:25 127:9 140:9 140:12 <b>provides</b> 37:13 <b>provision</b> 55:15 57:6,25 <b>provisions</b> 134:6 <b>pull</b> 17:17 25:24 32:15 47:18 61:24 67:8 133:22 134:23 <b>pulled</b> 67:20,23 68:5 <b>pulling</b> 67:15 <b>purely</b> 15:21 71:17 <b>purpose</b> 9:7,8 48:9 103:9 <b>purposes</b> 7:7 139:15,22 <b>pursuant</b> 1:17,17 55:16 77:4 <b>pursue</b> 120:20 <b>pursued</b> 120:12,15 <b>purview</b>	55:21 <b>put</b> 21:21 28:21 29:22 38:2 55:7,14 60:9 123:15 <b>putting</b> 28:14 66:12  <b>Q</b> <b>question</b> 5:4,11,12,15,21 6:4,6 6:8,11,14,19,20 16:21 19:20,25 20:18 21:6 22:5 24:5 27:20 38:1 39:11,16 40:6,19,21 45:21 46:6 47:11 49:1 50:16 54:24 55:20,24 63:7 64:16 66:4,5 67:3 71:22 73:10 74:9 81:1 82:5 86:6 87:21,23 88:22,25 89:2,12,14 89:19 90:9 91:7,11 91:11,14,19,22 92:11,20 93:1,3,7,8 94:1,15 95:7,8,12 98:4 99:16,18,22 100:1 104:1 107:18 107:25 108:6 113:14 115:13 121:7,12 124:23 125:2,18 127:15,16 127:18 133:14 <b>questions</b> 5:19 32:8 39:7,12,15 40:6 44:15 54:11 75:14 119:6,12,15 132:20 138:14 140:22 141:2 <b>quick</b> 138:13 <b>quickly</b> 47:25 <b>quite</b> 111:7	<b>quote</b> 113:4 114:2  <b>R</b> <b>R</b> 10:9 <b>raised</b> 24:4 <b>rare</b> 43:21,23 <b>Ray</b> 75:11 79:13 91:6 100:23 101:15 119:14 122:13 134:23 138:11 141:1 <b>re-reviewed</b> 60:18 <b>reached</b> 24:13 25:18 31:18 <b>read</b> 26:22,23,25 46:19,21 54:18 62:4,7 67:19 72:13 84:15 89:5 110:12 112:21,24 122:10 135:21,22 139:12,13 <b>reading</b> 26:21 33:22 74:1 125:7 <b>really</b> 60:3 64:15 67:3 82:4 91:3 93:1 95:2 <b>reason</b> 6:17 8:19 22:7 36:14 36:22 43:2 59:20 60:4 130:12 <b>reasonable</b> 73:4 <b>reasonably</b> 79:7 100:12 124:4 125:3 <b>recall</b> 24:25 25:10,19 86:12 93:9 98:20 101:7 110:15 139:7
---	---	---	--

<b>receipt</b> 70:12 130:5	122:1	118:1 124:5,18	130:18
<b>receive</b> 25:3 39:4 44:1	<b>referenced</b> 58:23 74:17 75:1	127:25 128:1	<b>renewal</b> 44:15,21 45:1,4,8,15
<b>received</b> 25:20 66:17 85:4	119:24	138:14	45:19 46:4,11,14
<b>receives</b> 38:3	<b>references</b> 108:3	<b>regarding</b> 40:1 75:1 85:7 86:19	49:3,20 50:22 70:1
<b>recision</b> 46:17 47:9 48:11	<b>referral</b> 34:22 35:14 36:14,16	94:3,12 103:3	85:4 111:7,24 122:8
49:5 55:16,17,19	36:23 38:25 39:8	<b>regions</b> 11:20 12:3,6	123:6,9,12,14 124:1
56:2 59:13,15 71:10	104:23 105:3	<b>Registered</b> 1:22 143:6	124:7,19,20,21
71:14,20 72:2 74:6	<b>referrals</b> 33:21	<b>regularly</b> 41:9,11,12	125:20,22,22
74:14,24 128:3	<b>referred</b> 27:13 34:3,4 35:7,9	<b>regulations</b> 55:3,5,7,9	126:11 127:4,6,8
<b>recognize</b> 18:10 48:5 51:13	36:1,8 39:3 44:11	<b>reiterate</b> 68:8	129:24 130:14
67:22 68:2 110:10	44:18 45:12,23	<b>related</b> 54:12 134:6	131:8 134:20
111:4 135:23 136:7	52:22 113:9 115:10	<b>Relatedly</b> 44:9	<b>renewal's</b> 123:24
<b>recollection</b> 9:4 10:3 25:15,19	117:18 130:6	<b>relating</b> 139:20	<b>renewals</b> 44:25 46:2
<b>recommendation</b> 15:20,23	140:17	<b>relative</b> 86:4 143:20,22	<b>renewed</b> 120:24 121:9
<b>record</b> 26:24 46:21 64:22	<b>referring</b> 19:17 23:16 32:25	<b>relayed</b> 34:15	<b>renewing</b> 36:11 50:16,18,22
84:20 89:5 139:14	44:20 58:21 63:22	<b>relevant</b> 108:6	<b>RENIER</b> 2:6,7
<b>recovery</b> 70:15	64:3 65:8 66:19	<b>reliance</b> 96:8	<b>rent</b> 89:17 90:1,18,25
<b>Recross-Examinati...</b> 3:8 139:4	68:21 88:15,18,21	<b>relied</b> 95:22 96:3,8 97:15	91:2 93:3 108:4
<b>red</b> 120:7	104:2 108:1 114:5	<b>relies</b> 38:7	<b>rental</b> 27:3 33:4 34:8,8
<b>Redirect</b> 3:6 133:1	116:19 133:10	<b>relying</b> 80:21	39:10 40:18 42:23
<b>reduced</b> 143:12	<b>refers</b> 49:7 51:25 91:22	<b>remained</b> 41:16	43:4,22 58:25 64:2
<b>refer</b> 27:19 32:9 34:10	107:1 114:1 116:9	<b>remains</b> 36:12	64:20 65:7 91:16
49:5 50:1 70:20	119:1 120:13	<b>remember</b> 13:13 21:9 51:2 58:1	92:18,19 99:19
74:5 114:7 115:12	<b>reflect</b> 24:23	70:5 81:7 84:10	103:11,12,21
115:14 117:12	<b>reflected</b> 130:21	96:1 101:6	105:12,19,24 106:4
129:2	<b>reflects</b> 62:24 63:3	<b>remitted</b>	106:9,17,19 107:2
<b>reference</b> 17:19 32:16 69:4	<b>refresh</b> 9:4		108:20 109:7
74:4,10 92:21	<b>refreshes</b> 25:14 26:1		113:18 115:2,8,15
111:12 114:24	<b>regard</b> 50:1 68:18 80:19		118:8,13,17 120:8
116:8,17 118:25	88:21 92:16 93:4,18		120:13,23 131:2
	94:16 98:19 99:9		133:23 134:12
	104:23 112:8		<b>rentals</b> 34:1,2 35:24 40:13
	113:22 117:25		40:23 41:16 43:7,8

103:17,23 104:12 105:4,18 106:8 107:5,7,22,23 108:1 108:14 113:5,25 114:3,19 116:3,8,18 118:3,19,25 121:3 121:11 123:18 126:6 <b>rented</b> 19:21 22:12 23:14,17 27:4 39:17 86:24 89:6 90:19,24 91:1 92:12 <b>renting</b> 90:10,15 <b>rents</b> 106:20 <b>rephrase</b> 46:25 85:14 115:12 118:9 <b>replies</b> 114:12 <b>reported</b> 143:11 <b>reporter</b> 1:22,23 4:23 7:20 58:9 76:5,7,10 84:1 110:3 141:4,12 143:6,7 <b>represent</b> 4:12 21:15 109:23 <b>representation</b> 79:3 <b>representations</b> 38:7 53:2 <b>representative</b> 113:13 <b>represents</b> 88:22 <b>request</b> 6:20 100:10,18 101:22 137:19 <b>requested</b> 46:21 <b>requesting</b> 111:6 128:1	<b>require</b> 32:7 34:21 <b>required</b> 4:18 53:22 <b>requirements</b> 38:11 <b>rescinded</b> 49:13 <b>reserve</b> 132:19 <b>resolving</b> 64:5 <b>respect</b> 8:21 16:5 37:22 40:23 44:15 70:25 79:14 133:13 <b>respond</b> 66:4 <b>responded</b> 92:10 <b>responding</b> 5:18 <b>response</b> 5:3 100:4,12 <b>responses</b> 5:1 38:22 <b>responsibilities</b> 13:16 <b>responsible</b> 34:24 56:1 <b>rest</b> 20:25 43:19 74:1 <b>resulted</b> 60:10 <b>retail</b> 25:7,11 29:7 30:6 66:7 89:20 <b>retained</b> 3:23 <b>return</b> 40:24 58:3 <b>returned</b> 49:23 <b>review</b> 9:3,6,9,20 10:4 32:11 34:12 37:21 63:3	70:13 74:13,16 75:1 84:19,23 <b>reviewed</b> 17:13 21:8 40:4,16 46:7 60:17 84:9,13 98:22 105:24 121:15 123:11 124:24 127:10 <b>reviewing</b> 18:18 31:22 39:1 73:21 74:11 75:11 <b>right</b> 7:4,17 14:12 19:3 21:10 26:6 27:25 31:25 52:16,17 62:2 62:13,18 63:5 72:14 76:21 81:10 83:4 89:4 92:4,15 93:9 96:16 102:6,10 104:22,24 105:2,5 106:15,18 110:8 111:2,10 112:2 114:6,8 115:10,23 116:21 117:13 118:8,18 119:4 120:24 121:3 122:8 124:2 125:1,8 128:17 135:16 139:3 140:4,25 141:6 <b>rights</b> 76:4 <b>Riker</b> 2:12 4:11 <b>risk</b> 34:19 36:23 43:10 103:14 134:10 <b>risks</b> 42:25 43:4,13 133:8 133:17,24 134:13 <b>RLI</b> 10:19,20 11:4,7,10 12:13,17,20,22,25 13:4,10 77:1 <b>role</b> 50:6,9,13,17,21	112:5,5 <b>roles</b> 80:15 <b>Roughly</b> 8:12 <b>RPR</b> 144:8 <b>RSUI</b> 29:12,14 40:8,12 97:9 98:5,9,13,23 99:3,9 103:5 <b>rules</b> 1:18 4:17 54:17 79:8 <b>run</b> 11:18 <b>running</b> 11:24 <b>RUSI's</b> 99:14 <hr/> <b>S</b> <hr/> <b>S</b> 3:10 16:17 140:2 <b>safe</b> 90:8 <b>saved</b> 62:23 <b>saying</b> 15:25 40:12 102:15 106:6 121:8 <b>says</b> 34:1 42:3 54:9,10 60:5,6 62:18,22 63:6 73:20 97:10 104:22 110:25 113:2 124:3 125:16 126:1 <b>scenario</b> 137:23 <b>scope</b> 78:18 <b>screen</b> 17:18,21,24 26:3 27:25 28:1 32:19 41:1 47:16,20 51:10 51:11 52:10 54:6
---	---	---	---

61:25 62:1 67:17 72:8,10,11,14,22 76:3 78:21 88:11 106:25 119:1 135:14 <b>screenshots</b> 62:23 <b>scroll</b> 19:4,9 20:10 42:21 47:24 51:15,17 52:2 62:19 67:24 77:9 135:17 <b>scrolling</b> 22:10 42:1 <b>second</b> 2:8 5:8 8:24 19:19 20:11,12 45:4,15 46:11 68:22 76:14 87:15 95:10 110:12 122:18 123:23 127:7 128:10 131:6 135:12 <b>section</b> 54:9 104:7,22 134:10 139:11 <b>see</b> 17:21,24 21:1 25:25 26:3 28:1 32:19 33:14,24 41:1 45:20 46:13 47:19 51:11 52:13 54:6 57:5 61:5,21 62:1,23 67:7,17 72:11,21 73:18,19 78:20 87:20 102:23 104:21 109:16,19 111:9,11,22 112:22 117:19 121:24 122:20 125:10 126:7 128:12 129:20,25 130:4,22 135:19 138:9 <b>seeing</b> 99:23 <b>seeking</b> 15:3 70:15 87:25	111:24 138:4 <b>seen</b> 10:1 84:16 107:9 110:16 129:1,4 130:15 <b>selected</b> 78:7 <b>sending</b> 68:13 <b>sent</b> 26:11 37:2,10 48:10 68:7 <b>sentence</b> 26:22 27:2 33:23 34:4 73:16 112:22 112:24 140:17 <b>sentence's</b> 74:10 <b>sentences</b> 139:12 <b>separate</b> 91:19 <b>September</b> 23:7 24:14 59:24 60:13,25 63:5 73:1 73:6 103:1 124:15 129:23 130:19,21 <b>September/October</b> 60:22 <b>serve</b> 66:21 <b>service</b> 39:18 40:15 54:4 57:21,23 58:25 131:16 <b>services</b> 103:14 <b>set</b> 31:20 <b>shake</b> 5:5 <b>share</b> 27:25 51:9 72:9 76:4 <b>shared</b> 127:25 <b>sharing</b>	27:21 47:16 72:8 76:3 88:11 <b>short</b> 29:2 33:22 61:22 138:24 <b>short-term</b> 34:1,7 35:24 39:10 40:13,23 41:15 43:8 43:12,16,22 58:25 63:21 64:2,20 65:7 85:18 86:9,15 87:7 88:1 91:17 92:5 93:11 98:19 99:13 103:11,12,17,21,23 104:12 105:4,17,23 106:8,9 107:5,21,23 108:13,20 109:7 113:5,18,24 114:2 114:19 115:2,8,15 116:2,8,18 118:2,8 118:13,17,19,25 120:8,12,23 121:2 121:11 123:18 126:6 131:2 <b>Shorthand</b> 1:22 143:6 <b>shortly</b> 17:3 61:3 <b>show</b> 76:15 77:10 128:8 <b>showed</b> 35:22 52:12 57:7 76:18 <b>sic</b> 81:7 <b>signatories</b> 56:3 <b>signatory</b> 81:11 <b>signature</b> 67:25 77:10 110:9 144:2 <b>signed</b> 73:12 <b>significantly</b> 86:1	<b>similar</b> 29:21 39:18 40:7,11 42:23 43:3,7,18 58:24 98:17 103:14 105:12,18 106:3,17 106:18 107:2 115:1 133:18,23 134:12 134:15 <b>simple</b> 95:12 <b>simply</b> 92:22 <b>singled</b> 22:11 <b>sir</b> 10:14 49:14 68:1 93:15 95:21 111:4 112:2 121:25 126:7 128:11 131:10 <b>sit</b> 21:10 40:19 49:9 105:15 <b>situation</b> 35:25 106:2,13 120:7 131:2 <b>six-month</b> 92:19 93:4 <b>sleep</b> 7:6 <b>slightly</b> 110:9 <b>slow</b> 48:3 <b>small</b> 90:4,7 <b>somebody</b> 120:15 <b>soon</b> 127:13 <b>sorry</b> 7:11 16:15,19 33:13 35:19 46:18 61:16 70:19 77:21 84:2 101:13 128:19 135:2,13 <b>sort</b>
--	---	---	--

37:1,21 75:17 106:7 135:12 140:5 <b>sought</b> 34:10 <b>sound</b> 22:4 25:13 61:8 <b>sounds</b> 12:11 21:12 <b>South</b> 11:20 12:3,6,8,9 <b>SOUTHERN</b> 1:2 143:2 <b>speak</b> 7:18 95:2 126:20 <b>speaking</b> 31:24 50:5 59:16 65:21 66:12,16 82:6 <b>speaks</b> 15:1 106:25 <b>specific</b> 10:2 66:13 74:9 94:1 99:5 <b>specifically</b> 9:22 19:15 29:16 40:14 58:20,25 87:17 127:7 138:14 <b>specifics</b> 99:21 <b>specified</b> 143:16 <b>specify</b> 114:4 <b>speculate</b> 117:2,3 <b>speculation</b> 116:25 <b>spell</b> 16:14 <b>split</b> 142:2 <b>spoke</b> 131:17 <b>spoken</b> 112:18 <b>SS</b> 143:2	<b>stamp</b> 110:23 <b>stand</b> 98:9,13 <b>standard</b> 29:23 39:22 43:5 53:6,10,22 57:10,19 69:7 95:24 133:6 <b>stands</b> 97:13 98:6 <b>Starr</b> 13:6,16 <b>start</b> 5:12 13:12 119:7 <b>started</b> 4:15 <b>state</b> 10:8 45:8 47:5 54:15 143:3 <b>stated</b> 68:22 83:6 108:10 <b>statement</b> 82:3 <b>states</b> 1:2,19 12:4,7 55:8 102:9,15 143:1 <b>stating</b> 24:19 101:25 131:20 <b>statute</b> 55:13 <b>statutes</b> 55:2,4,6,8 <b>statutory</b> 128:2 <b>stenographically</b> 143:11 <b>step</b> 132:23 <b>steps</b> 38:4,16 <b>stomach</b> 139:2 <b>stop</b> 27:21 47:16 51:18 72:8 88:11 119:10 <b>stored</b>	37:18 <b>strategic</b> 71:22 <b>Street</b> 2:3 22:5 27:3 <b>strictly</b> 83:1 95:20 115:20 <b>strike</b> 33:13 35:19 59:10 <b>studies</b> 14:7 <b>stuff</b> 75:11 <b>subcategory</b> 107:6 <b>subheadings</b> 106:7 <b>subject</b> 22:17 46:16 55:12 56:25 63:4 78:10 113:24,24 114:6,9 114:11 116:12,20 117:13 119:22 123:3,19 131:3 135:18 <b>submission</b> 105:3 <b>submit</b> 32:9 104:22 <b>submitted</b> 17:8 18:15,23 25:7 30:5 32:3 38:18 66:15 106:10 137:18 139:19 140:13 <b>subpart</b> 91:20 <b>subsections</b> 106:7 <b>subsequent</b> 45:5 136:14 <b>subset</b> 118:5 <b>subsidiary</b> 11:4 <b>substance</b>	59:17 60:6 <b>substantially</b> 40:7,11 <b>sufficiently</b> 7:19 <b>suggested</b> 98:4 <b>suit</b> 54:5 57:22,24 116:10 131:16 <b>Suite</b> 2:3 <b>sum</b> 59:17 60:6 <b>summary</b> 27:6 <b>supplemental</b> 3:12 18:14,25 20:6 20:13 28:7,12 29:6 29:9,10,18 30:4 39:20,23 40:2,8,17 63:17 66:6,14 87:11 87:22 88:16 98:18 99:20 100:18 123:22 124:14 <b>suppose</b> 64:5 82:10 136:20 <b>supposed</b> 115:17,20,22 <b>sure</b> 15:16 31:12 36:20 37:7,25 51:16 55:11 60:3 61:10 64:15 65:1 77:7 80:6,8 81:4 93:20 94:16 100:21,22 110:13 111:9,21 113:2 121:6 126:23 129:6 135:9 136:16 <b>surprised</b> 113:12 <b>surrounding</b> 67:5 103:20 <b>suspicion</b> 23:11 24:4 86:19 <b>suspicious</b>
--	---	---	--



86:14 <b>switch</b> 76:3 109:10 <b>switched</b> 22:2 75:21 <b>sworn</b> 4:1,5 143:9	<b>tenant</b> 90:18,20 <b>tenants</b> 92:23 <b>term</b> 140:6 <b>termed</b> 20:19 <b>terms</b> 58:15,22 88:17 131:7 <b>territory</b> 12:10 <b>test</b> 7:12 <b>testified</b> 4:6 86:7 93:15,19 95:18,22 98:14,21 102:14 108:17 131:14 <b>testify</b> 77:23 78:1 98:25 102:21 105:16 121:19 124:3,4,6 125:3 126:9 127:3 143:9 <b>testifying</b> 78:11 87:3 119:6,15 119:17 124:13 <b>testimony</b> 8:1,5 9:1 76:23 83:10 96:1 97:18,21 98:20 99:8 114:17 115:3 115:11 128:4 133:11 139:7 <b>text</b> 72:23 <b>texting</b> 7:2 <b>thank</b> 10:6,14 17:5 22:9 25:16 28:6 41:4 48:25 49:14 58:12 70:3,14 94:18 109:13 126:22,25 132:18 138:22 140:21,22,24	<b>Thanks</b> 141:1 <b>theirs</b> 53:16 <b>thing</b> 105:10 106:14 117:1 <b>things</b> 120:1 <b>think</b> 23:22 27:24 36:12 47:2,13 58:6,22 61:19 76:7 91:18 94:6 96:2,3 101:4,9 106:24 121:20 125:7 130:20 132:18 133:10 136:6 137:10,11 138:10 141:14 <b>thread</b> 18:3 <b>three</b> 57:15 128:5 <b>three-bedroom</b> 90:5 <b>three-month</b> 93:5 <b>Tiffany</b> 112:7 <b>Tim</b> 125:12 140:24 141:12,18 <b>time</b> 6:19 22:18 23:13 31:9,13 41:12 56:19 56:19,20 61:6,14 63:15 72:21 86:12 86:13,24 109:1,6 112:11 130:25 134:19 140:23 143:15 <b>times</b> 8:10 32:6 112:16 <b>TIMOTHY</b> 2:2 <b>title</b> 12:21	<b>today</b> 7:24 49:9 76:23 81:8 83:10 84:8 99:9 115:3,11 128:4 139:7 <b>told</b> 15:20 74:21 75:3 78:8 <b>top</b> 51:15 52:9 72:21 97:11 104:13,21,22 <b>topic</b> 80:12,24 85:7 121:20 121:25 122:20 124:3 126:1 <b>topics</b> 77:14,15,23 78:13,18 78:25 80:5,5,11,16 81:21 121:19 <b>total</b> 8:17 113:6 <b>touches</b> 17:7 <b>transcript</b> 5:9 141:5,23 <b>transmitted</b> 42:13 <b>treated</b> 95:12 <b>trial</b> 9:1 <b>trick</b> 6:3 <b>true</b> 82:10 83:16 <b>truth</b> 4:19 143:10 <b>truthful</b> 8:1,5 <b>try</b> 5:13 <b>Tuesday</b> 56:17,18 94:7 141:8 <b>turnover</b> 43:8 <b>twitch</b>
<b>T</b>			
<b>T</b> 3:10 <b>table</b> 7:6 <b>take</b> 6:20 24:16 28:11 52:19 60:10 61:6 74:2 107:16 113:19 <b>taken</b> 1:16,20 7:24 8:8,19 27:17 38:4,16 87:5 131:11 143:15 <b>takes</b> 37:8 <b>talk</b> 7:17 122:6 <b>talked</b> 133:3 <b>talking</b> 5:10 17:19 21:11 28:25 40:22 71:8 80:13 133:11 141:17 <b>tdelahunt@delahu...</b> 2:4 <b>team</b> 11:19 <b>tech</b> 76:11 <b>tell</b> 4:19 5:23 13:19 18:12 19:15 30:10 34:3 47:15 48:7 62:12 93:2,7 112:23 113:3 <b>ten-minute</b> 56:21			

126:14	54:20 55:2 74:3,7	<b>unfamiliarity</b>	<b>verbalize</b>
<b>two</b>	76:22 78:9 79:21	43:9	5:3
44:25 56:3 68:25	92:14 107:9 123:2	<b>unit</b>	<b>verbiage</b>
80:25 90:24 91:1	<b>understanding</b>	16:2,3,9	87:21
95:9 101:8 104:10	14:22 15:2 24:8	<b>United</b>	<b>verify</b>
134:5 139:12 140:1	26:13 40:5,20 41:14	1:2,19 12:3,6 143:1	38:4,11,16 137:5
<b>two-bedroom</b>	43:21 54:25 71:13	<b>units</b>	<b>version</b>
90:3	78:12 98:15 123:13	27:3	40:17 42:3 69:5
<b>type</b>	133:16	<b>University</b>	134:9
31:1,2 40:21 66:8	<b>understood</b>	13:24	<b>versus</b>
99:18 118:7	6:8	<b>unmute</b>	103:12
<b>types</b>	<b>undertake</b>	135:3	<b>Vice-President</b>
43:7 69:7 107:22	38:21	<b>updated</b>	11:11,17
133:9	<b>underwrite</b>	41:9,11 134:4,9	<b>video</b>
<b>typewriting</b>	30:23	<b>updates</b>	126:24
143:12	<b>underwriter</b>	41:20	<b>violation</b>
<b>typically</b>	32:11 34:11 50:12	<b>Urbana-Champaign</b>	64:12
38:6 69:20	56:8 105:25	13:25	<b>virtual</b>
<b>typo</b>	<b>underwriters</b>	<b>usage</b>	5:1
65:24 66:9,17,20,21	30:14,15,16,20,23	137:13	<b>vis-a-vis</b>
66:21 67:5	31:5 41:21,23,24	<b>use</b>	99:10
	43:20 135:1 137:17	31:3 59:23 60:12	<b>voiced</b>
	<b>Underwriters'</b>	88:17 97:5	6:12
	129:14	<b>user</b>	<b>Vrbo</b>
<b>unaware</b>	<b>underwriting</b>	63:3	22:20 23:3,15,18
64:14	3:14 31:4,21 32:14	<b>USI</b>	24:21 27:4 39:18
<b>unchanged</b>	32:24 33:6,11,17	25:12,15,21 94:19	40:1,14 41:16 42:23
41:17	34:20,25 35:13 36:5	95:7,14 108:22	43:3,6,18 58:21
<b>unclear</b>	36:24 40:25 41:5,20	112:7 135:1,8	86:25 103:11,13
91:19	42:5,11,22 46:10	<b>USI's</b>	105:11,18 106:3,6
<b>uncommon</b>	50:13 59:8 64:12	112:5	106:10,16 107:1
29:17	81:23 82:2,8,22	<b>Usually</b>	114:25 118:4,14
<b>undergo</b>	83:20 93:10 95:5,21	69:20	133:7,18,23 134:7
104:24	95:23,25 96:12,18		134:11,14 137:3,6
<b>undergoes</b>	98:16 99:12,17		<b>vs</b>
37:22	100:5 102:9 103:5		1:6
<b>undergrad</b>	103:10 104:3,8		
14:5	107:8,12,19 108:13		
<b>undergraduate</b>	115:16 121:16		
14:6	122:5,6,7,11 123:11		
<b>underlying</b>	123:24 124:25		
15:6 21:3,7 22:17	125:23 126:2,10		
68:19 70:17,25	127:3,10 133:4,20		
116:10	134:2,9		
<b>understand</b>	<b>underwritten</b>		
4:20 5:5,25 6:4 7:9	127:8		
21:23 37:25 48:20			

82:16 93:20 100:10 101:2,3,18 102:19 121:20 127:15,18 132:22 135:17 141:5,13,17,22,25 <b>wanted</b> 79:15 125:11 126:22 128:7,8 135:9 <b>wasn't</b> 75:22 97:1 99:8 120:14 121:18 122:3 123:25 <b>way</b> 29:23 38:2 47:14 55:7,14 60:9 67:2 76:2 87:13,16,17 98:9,10 99:14 125:8 128:19 132:12 138:5 <b>we'll</b> 8:23 23:20 32:14 61:20 72:8 142:2 <b>we're</b> 5:17 6:3 17:19 20:17 21:11 28:6,25 32:16 58:6,10 61:7 66:11 88:18 92:14 101:21 111:2 117:23 135:10 138:23 141:16 <b>we've</b> 22:10 40:22 56:5 107:25 114:22 <b>website</b> 62:22,23 63:9 <b>week</b> 19:22 22:12 89:7 92:13 108:2 <b>went</b> 26:17 78:16 <b>White</b> 56:4,7,11,15 81:9,19 94:8 <b>wholly-owned</b> 11:4 <b>withdraw</b>	74:14,24 128:2 <b>withdrawal</b> 47:9 <b>withdrawn</b> 71:14 <b>witness</b> 3:2 4:1,4 16:16 28:4 28:23 33:3 44:23 47:1,11 60:2 64:10 64:25 65:15 66:2 67:1 70:11 76:16,24 79:6,25 83:15 85:21 86:17 87:9 90:13,22 92:1,7 97:20 101:6 101:24 102:3,3,7 105:21 114:21 116:6,24 117:6,22 118:23 119:11,14 120:10,18 121:5,14 125:2,6 126:15,18 132:3 137:9,15 138:1,25 141:3,15 144:1 <b>witness'</b> 141:23 <b>word</b> 84:15,16 107:16 140:2 <b>worded</b> 98:18 <b>wording</b> 99:22 <b>words</b> 14:22 21:21 69:2 <b>work</b> 31:8 41:25 50:11 61:19 <b>working</b> 61:14 <b>works</b> 16:9 79:19,21 <b>worry</b> 76:1 <b>wouldn't</b> 57:17 59:6 66:8 90:18	<b>Wright</b> 81:6 83:18,21 94:5 94:16 <b>writing</b> 82:18 100:21 <b>written</b> 112:25 <b>wrong</b> 99:1 111:11 133:5 <hr/> <b>X</b> <hr/> <b>X</b> 3:1,10 <hr/> <b>Y</b> <hr/> <b>yeah</b> 7:8 21:20 42:14 48:1 50:10 51:19 61:17 61:18 62:12 75:13 84:11 88:8,9 104:11 104:14,17 121:22 121:24 125:14 131:15 132:24 138:21 141:7,11 <b>year</b> 8:15 14:1 45:5 86:2 120:25 <b>year's</b> 136:14,14 <b>years</b> 8:15,17,18 23:18 24:21 57:15,16 90:24 134:5 <b>yesterday</b> 56:22 94:7 <b>York</b> 1:2 2:4,8,8,14,14 54:16 55:13,18 57:6 131:12,20 132:8 143:2 <b>York's</b> 54:16,21,23 55:6,10 <hr/> <b>Z</b> <hr/> <b>zoom</b> 1:14 52:7 62:5	143:11 <hr/> <b>0</b> <hr/> <b>084-004857</b> 144:11 <hr/> <b>1</b> <hr/> <b>1</b> 54:8 77:15 78:10 89:14 121:20 <b>1,000</b> 90:3 <b>1,032,500</b> 113:7 <b>1,800</b> 90:5 <b>1:03</b> 141:3 <b>1:22-cv-10354</b> 1:6 <b>10</b> 8:16,18 <b>10:09</b> 1:24 <b>10:35</b> 61:11 <b>10:40</b> 61:11 <b>10105</b> 2:8 <b>10110</b> 2:14 <b>11</b> 73:1,6 <b>11:35</b> 61:19 <b>110</b> 3:20 <b>12</b> 34:2 93:12 108:14 <b>128</b> 3:21 <b>133</b> 3:7 <b>1345</b> 2:7
---	--	---	---

<b>14</b> 48:16 77:15 78:10 <b>14203</b> 2:4 <b>146</b> 22:4 27:3 <b>14th</b> 3:15 51:3 56:1 59:12 59:22 60:5 61:3 <b>15</b> 8:17,18 <b>15th</b> 1:24 143:17 <b>17th</b> 27:10 <b>18</b> 3:12 62:20 <b>1997</b> 14:11 <b>19th</b> 144:2 <hr/> <b>2</b> <hr/> <b>2</b> 60:25 81:3 89:2,11 121:20,25 122:2 126:1 <b>2000</b> 14:3,4 <b>2014</b> 13:14,15 <b>2016</b> 41:7,8,17 <b>2018</b> 11:8,9 13:1,2 62:25 63:5 <b>2020</b> 103:1 124:15 <b>2021</b> 53:24 54:1 <b>2022</b> 23:7 24:14 27:10 48:16 49:3 60:5,13 60:22,25 61:3 62:20 85:5 108:19 109:2 115:24 118:21	121:9 122:10 123:16 124:21 125:21 129:23 130:14,19 134:19 135:6 <b>2023</b> 1:25 11:15,16 12:23 73:1,6 85:5 86:1 121:10 123:16 124:21 125:22 130:14 134:20 143:18 144:3 <b>21</b> 3:16 45:9 48:21 49:6 49:7,19,23 50:22 52:5 58:5 69:25 125:16 <b>212</b> 2:9 <b>22</b> 3:16 45:9,16 46:14 48:21 49:6,8,10,16 49:19,23 50:22 52:6 58:5 69:25 121:16 122:2 125:16 <b>2202</b> 85:25 <b>23</b> 45:16 46:15 49:3,10 49:16 121:16 122:2 <b>28</b> 3:13 <b>28th</b> 130:21 <b>295</b> 2:3 <b>2nd</b> 23:7 103:1 115:24 118:21 <hr/> <b>3</b> <hr/> <b>3</b> 19:20 89:3 <b>3,000</b> 90:6 <b>30(b)(1)</b>	79:15 <b>30(b)(6)</b> 79:4,6,19,21 <b>3105</b> 55:18 <b>33</b> 3:14 <b>33rd</b> 2:13 <hr/> <b>4</b> <hr/> <b>4</b> 3:4 <b>40</b> 129:18 <b>489</b> 2:13 <b>49</b> 10:13 <b>4A</b> 139:11 <hr/> <b>5</b> <hr/> <b>51</b> 3:15 <b>538-0800</b> 2:14 <b>58</b> 3:16 <hr/> <b>6</b> <hr/> <b>6</b> 77:16 <b>67</b> 3:17 <hr/> <b>7</b> <hr/> <b>7</b> 77:16 122:20 125:8 <b>70</b> 3:18 <b>75</b> 3:5,19 <hr/> <b>8</b> <hr/> <b>8</b>	129:23 <b>8/17/22</b> 3:13 <b>836</b> 2:3 <b>878-3636</b> 2:9 <b>8th</b> 130:19 <hr/> <b>9</b> <hr/> <b>97</b> 14:12 <b>973</b> 2:14
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